House of Representatives

Chamber Action

Bills Introduced: 18 public bills, H.R. 4560–4577; 8 private bills, H.R. 4578–4585; and 1 resolution, H. Res. 230 were introduced.

Pages H6581–H6582

Bills Reported: Reports were filed as follows:

H.R. 1352, H.R. 1796, H.R. 1624, H.R. 1977, and H.R. 3478, all private bills (H. Repts. 97–246, 97–247, 97–248, 97–249, and 97–250, respectively); and

H.R. 4560, making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for fiscal year ending September 30, 1982 (H. Rept. 97–251).

Page H6581

Michael Roll Post Office: House passed H.R. 4431, to provide for the designation of the E. Michael Roll Post Office.

Page H6504

Intelligence Identities Protection: By a yea-and-nay vote of 354 yeas to 56 nays, Roll No. 219, the House passed H.R. 4, to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources.

Agreed to the committee amendment in the nature of a substitute, as amended by:

An amendment that strikes the provision imposing a criminal penalty on individuals without previous access to classified information who intentionally identify covert agents and substitutes a provision that imposes a criminal penalty on anyone who engages in a pattern of activities intended to identify and expose covert agents with a reason to believe that those disclosure activities would impair or impede United States intelligence operations (agreed to by a recorded vote of 226 ayes to 181 noes, Roll No. 217); and

An amendment that extends protection to those who are former officers, agents, and employees of intelligence agencies (agreed to by a recorded vote of 313 ayes to 94 noes, Roll No. 218).

Rejected:

An amendment that sought to except from the charges of violation of disclosure the transmitting or disclosing of information previously available from public sources or unclassified materials (rejected by a division vote of 3 ayes to 38 noes); and

An amendment that sought to empower district courts to issue restraining orders or injunctions against any person who is about to engage in any conduct that would jeopardize the safety of individuals who expose the names of covert United States intelligence agents.

An amendment that sought to penalize anyone who identifies a United States official abroad as a covert agent, whether falsely or otherwise, under circumstances that may risk human life was withdrawn.

H. Res. 223, the rule under which the bill was considered, was agreed to earlier by a voice vote.

Pages H6504–H6541

Late Report: Committee on Appropriations received permission to have until midnight tonight to file a report on H.R. 4560, making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for fiscal year ending September 30, 1982.

Page H6541

NSF Authorization: By a yea-and-nay vote of 262 yeas to 149 nays, Roll No. 223, the House passed H.R. 1520, to authorize appropriations for activities for the National Science Foundation for the fiscal year 1982.

Agreed to the committee amendment in the nature of a substitute, as amended by an amendment, as amended (agreed to by a recorded vote of 245 ayes to 161 noes, Roll No. 221), that reduces the authorization level to $1.085 billion for fiscal year 1982 (agreed to by a recorded vote of 401 ayes to 5 noes, Roll No. 222).

H. Res. 183, the rule under which the bill was considered, was agreed to earlier by a voice vote.

Pages H6541–H6558

Legislative Program: The Majority Leader announced the legislative program for the week beginning September 28.

Pages H6556–H6557

Referrals: Two Senate-passed measures were referred to the appropriate House committees.

Page H6581

Amendments Ordered Printed: Amendments ordered printed pursuant to the rule appear on page H6583.

Quorum Calls—Votes: One quorum call, two yea-and-nay votes, and four recorded votes developed during the proceedings of the House today and appear on pages H6530–H6531, H6536–H6537, H6540, H6555–H6556, H6557–H6558.

Adjournment: Met at 10 a.m. and adjourned at 8:10 p.m.

determination to make the most money they can as fast as possible while protecting their enormous share of the oil market is also a rational policy for a regime whose own future is uncertain. One Saudi professor claims, "People feel they must race to make money before the oil is gone. They put it outside, in Brazil, in London, New York, so it will grow and if necessary they can join it."

In any case, Saudi oil policy can hardly be viewed as altruistic and deserving of military favors. If you believe that, in the words of the Wall Street Journal, "you're still waiting for the tooth fairy."

E. MICHAEL ROLL POST OFFICE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the bill (H.R. 4431) to provide for the designation of the E. Michael Roll Post Office, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. PEYSER). Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4431

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as soon as practicable after the date of the enactment of this Act, the Postmaster General shall—

(1) designate the post office located at 6400 Marlboro Pike, Forestville, Maryland, as the "E. Michael Roll Post Office"; and

(2) install in such post office, in a place in open view of the public, an appropriate plaque indicating the designation of the post office pursuant to this Act.

The SPEAKER pro tempore. The gentleman form Michigan (Mr. FORD) is recognized for 1 hour.

Mr. FORD of Michigan. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland (Mr. HOYER).

(Mr. HOYER asked and was given permission to revise and extend his remarks.)

Mr. HOYER. Mr. Speaker, at this time I would like to thank the chairman of my committee, the Committee on Post Office and Civil Service, the gentleman from Michigan (Mr. FORD), and the ranking minority member of that committee, the gentleman from Illinois (Mr. DERWINSKI), for the courtesies they have extended to bring this bill to the floor as rapidly as they have.

Mr. Speaker, I introduced this legislation calling upon the Postal Service to name its new facility in District Heights—Forestville after the late E. Michael Roll, the long-time mayor of District Heights, Md. I do this because of his tremendous work in the development of his community.

For 24 years Mike Roll led his city with a vitality not often seen in municipal government. It was he who provided the impetus for the postal facility, as he did for so many projects in his city. His achievements are many and it is a fitting tribute that we name the post office for him.

I know of no one in his community who was more loved or respected. He was always a source of inspiration for young people looking forward to a career in Government and politics, and he was an example of the kind of dedicated public leader we strive for in Government.

The realization of this honor unfortunately will occur after his death.

I am very pleased, Mr. Speaker, that as a result of this bill a post office will be named in honor of E. Michael Roll—this is a fitting tribute to a great and good man.

Mr. Speaker, I yield back the balance of my time.

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter, on the bill H.R. 4431, now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. FORD of Michigan. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RE-REFERRAL OF EXECUTIVE COMMUNICATION NO. 2099 TO COMMITTEE ON GOVERNMENT OPERATIONS

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from the further consideration of executive communication numbered 2099, and that it be re-referred to the Committee on Government Operations.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. WALKER. Mr. Speaker, reserving the right to object, I take this time simply to ask the gentleman what the nature of the executive communication is.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am pleased to yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Speaker, the communication, which transmitted draft legislation extending the period for payment of subsistence expenses to certain Government employees, amended provisions of the United States Code within the jurisdiction of the Committee on Government Operations. This request corrects the error in the referral.

Mr. Speaker, it would actually call upon us to take action within the jurisdiction of the Committee on Government Operations. We are trying to hand it back to the desk so it would go to the appropriate committee.

Mr. WALKER. Mr. Speaker, further reserving the right to object, this is acceptable to the minority, as I understand it?

Mr. FORD of Michigan. Yes, it is.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

INTELLIGENCE IDENTITIES PROTECTION ACT

Mr. MOAKLEY. Mr Speaker, by direction of the Committee on Rules, I call up House Resolution 223 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 223

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Permanent Select Committee on Intelligence now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. No amendment to the bill or to said substitute shall be in order except germane amendments printed in the Congressional Record on or before September 22, 1981. At the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MOAKLEY) is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the usual 30 minutes to the gentleman from Tennessee (Mr. QUILLEN) pending which I yield myself such time as I may consume.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, House Resoution 223 is the rule providing for the consideration of the bill H.R. 4, the Intelligence Identities Protection Act. It is a relatively simple rule, Mr. Speaker. It is an open rule providing for 1 hour of general debate. It makes in order the committee amendment in the nature of a substitute as an original bill for the purpose of amendment. And, Mr. Speaker, because the language in this bill must be written carefully in order to avoid any constitutional problems, the Intelligence Committee thought, and the Rules Committee agreed, that it would be a good idea to have amendments printed in advance in the RECORD. As a result, the rule requires that any proposed amendment must have been printed in the CONGRESSIONAL RECORD on or before September 22, 1981.

Mr. Speaker, the primary purpose of this bill, the Intelligence Identities Protection Act, is to impose criminal penalties on those who publish the names of our covert agents. Such exposure, Mr. Speaker, is a serious offense, which poses life-threatening risks to the agents themselves, in addition to the damage it does to the security interests of the United States.

One would hope, Mr. Speaker, that there would be no need for this kind of legislation. Unfortunately, that is not the case. Unfortunately, there are those who do seek to impede our intelligence activities and to endanger our agents. As a result of their publications, there have been attacks on those alleged to be our agents overseas and, in at least one tragic case, the attack caused someone's death.

In an effort to prevent the repetition of those kinds of circumstances, this bill imposes penalties on those who reveal the names of our covert agents. The penalties range from $15,000 and 3 years in prison to $50,000 and 10 years in prison, depending on the circumstances. They apply both to those who reveal agents' names after having had access to classified information, and to those who did not have direct access to classified information, if the exposure of the agents' names was done with the "intent to impair or impede the foreign intelligence activities of the United States."

The Intelligence Committee recognized, however, that in imposing these sanctions on the publication of information, they were legislating in a difficult area because of the potential for imposing on people's first amendment rights. The committee wanted to try to prevent future danger to our agents and their missions, but at the same time they wanted to be very sure not to abridge any constitutional rights. And, Mr. Speaker, they worked long and hard to do just that. The committee has struck a very careful balance; they have brought us a good bill that deserves our support.

Mr. Speaker, I urge the adoption of House Resolution 223 so that the House may proceed to the consideration of this bill.

□ 1045

Mr. QUILLEN. Mr. Speaker, I yield myself as much time as I may use.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, the able gentleman from Massachusetts (Mr. MOAKLEY) has not only described the provisions of the rule but many of the major provisions of the bill itself. The Permanent Select Committee on Intelligence is highly respected. Each Member of the House appreciates the fine job done by the chairman and the ranking member, and in fact by each member of that committee. We have confidence in what they report out.

So today I urge the adoption of the rule and when the matter is discussed on the floor of the House, in the Committee on the Whole, I urge the Committee to go with the full Permanent Select Committee on Intelligence and pass the bill as recommended.

Mr. Speaker, I have no requests for time and yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. BOLAND. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. BOLAND).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4, with Mr. MOAKLEY, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Massachusetts (Mr. BOLAND) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. Mr. Chairman, I yield myself such time as I might require.

Mr. Chairman, first may I congratulate the occupant of the chair (Mr. MOAKLEY) for his explanation of the rule which brings this bill to the floor.

Mr. Chairman, H.R. 4, the Intelligence Identities Protection Act, the so-called names of agents bill, would criminalize the disclosure of the identities of undercover intelligence officers or agents. Different penalties and elements of proof are established depending on whether the defendant was a present or former Government employee who acquires information from authorized access to classified information or whether the defendant derived the information disclosed from nonclassified sources.

H.R. 4 has received a great deal of public attention since it first was considered by the Permanent Select Committee on Intelligence in the last Congress. There appears to be public approval of those provisions of the bill criminalizing the disclosure of undercover identities flowing from access to classified information.

The controversy and criticism center around the section criminalizing disclosure where the defendant has not has access to classified information. This section, section 601(c), is intended to reach activities of the Covert Action Information Bulletin and similar groups. They claim they can discover the identities of our undercover officers and agents by diligently studying previously published diplomatic lists and biographical registers and comparing and collating the information contained therein with other publicly available information, having had no access to classified information. They claim it is unconstitutional to prohibit their disclosures.

Many newspapers, while denouncing such articles, have also stated that the proposed legislation violates the first amendment. Unanimously this committee disagrees.

H.R. 4 is a carefully crafted limited solution to a grave problem. It responds to an evil the Government clearly has a right to prevent. It is narrow and precise in its scope so as to give notice of the proscriptions, and it does not sweep within its purview any activities protected by the first amendment.

The Permanent Select Committee on Intelligence has been very sensitive to constitutional claims. We recognize the first amendment implications. This committee has spent many hours reaching our consensus, crafting a bill that responds to the disclosure problem without sacrificing constitutional rights. We, as well as the Senate Intelligence Committee, have spent over 2½ years dealing with this issue.

The initial version of H.R. 4, which also authorized prosecution of those with no access to classified information, was introduced on the first day of this Congress.

What we have done since then is to limit the sweep of the provision in

order to meet first amendment objections: It does not inadvertently cover normal reporting; it does not cover those investigating and disclosing intelligence agency wrongdoing; nor does it cover a group's efforts to determine if any of its members are informants.

The amendments which we adopted have reinforced the committee's intent, from the very beginning of our deliberations to reach those few miscreants who have taken it upon themselves to systematically destroy our intelligence community.

Thus, to successfully prosecute an individual who discloses the identities of undercover intelligence agents but who has had no access to classified information, H.R. 4 requires the Government to prove each of the following beyond a reasonable doubt:

That the disclosure was intentional;

That the covert relationship of the agent to the United States was properly classified information and that the defendant knew it was classified;

That the defendant knew that the Government was taking affirmative measures to conceal the agent's relationship to the United States; and

That the disclosure was made as part of an overall effort to identify and expose covert agents for the purpose of impairing or impeding the foreign intelligence activities of the United States through the mere fact of such identification and exposure.

A bill so narrowly focused threatens no one's first amendment rights; at the same time, it is the minimum necessary response to the obnoxious activities of those who make it a practice to ferret out and then expose our undercover officers and agents for the purpose of destroying our intelligence collection capabilities.

Mr. Chairman, I am aware that there exists concern among some Members about the constitutionality of section 601(c).

These concerns were well expressed and fully debated in the committee.

These concerns are honest ones and should be heard.

While I am not unmindful of them, I have been swayed in favor of H.R. 4 by the precautions which have been taken in its drafting and by the conviction, which I believe is shared by the overwhelming majority of the American people, that the activity which section 601(c) proscribes is a pernicious act that serves no useful informing purpose whatsoever.

Such activity does not alert us to abuses; it does not further civil liberties; it does not bring clarity to issues of national policy; it does not enlighten public debate; and it does not contribute one iota to the goal of an educated and informed electorate.

Whatever the motives of those engaged in such activity, the only result is the complete disruption of our legitimate intelligence collection programs, programs that bear the imprimatur of the Congress, the President, and the American people.

Such a result benefits no one but our adversaries.

Mr. Chairman, I am certain that the Members are fully aware of the many bills, most of them urgent, which must reach the House floor in the next weeks.

I believe that H.R. 4 is as critical a measure as any because of the much needed protections it will provide to the dedicated men and women who serve in our Nation's intelligence services.

Further, I believe that H.R. 4 is so drafted that amendments—be they termed strengthening or weakening—will unbalance its approach.

Accordingly, I will oppose all those amendments which I am aware will be offered.

I urge the Members of the House to consider carefully the matters before them today, but I urge that that consideration be in full recognition of the consensus which this bill represents and that all amendments be defeated.

I take this time, Mr. Chairman, to commend the chairman of the Subcommittee on Legislation, the distinguished gentleman from Kentucky, (Mr. MAZZOLI), and his colleagues on that committee, the gentleman from Georgia, (Mr. FOWLER), and the gentleman from Indiana, (Mr. HAMILTON), as well as the ranking minority member, the gentleman from Illinois, (Mr. MCCLORY), and the gentleman from Ohio, (Mr. ASHBROOK), for the diligence and the work and the hours that all of them have put into this very sensitive piece of legislation.

Mr. Chairman, there will be some half dozen amendments that will be offered to this bill. It is the hope of the majority of the members on the Permanent Select Committee on Intelligence that those amendments would be voted down. But we bring to the floor a bill that has the consensus, the near unanimous approval of all of the members of our committee. It is a bill where consensus has been met with our colleagues in the Committee on the Judiciary. Last year this bill was referred to the Committee on the Judiciary. This year, because of the consensus between the members of the Permanent Select Committee on Intelligence and the members of the Judiciary Committee, this bill is brought to the floor without sequential referral.

So, Mr. Chairman, I ask the members of this committee to support the bill as reported by the committee and to reject the amendments that will be offered by members, one member on our committee, and other members who are concerned about some of the provisions, and particularly section 601(c) of this bill.

Mr. MCCLORY. Mr. Chairman, will the gentleman yield?

Mr. BOLAND. I am delighted to yield to the ranking minority member of the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, the gentleman from Illinois (Mr. MCCLORY).

Mr. MCCLORY. I thank the gentleman for yielding.

I just want to make a brief comment. First of all I want to commend the gentleman from Massachusetts (Mr. BOLAND), the chairman of our committee, for his very effective leadership, particularly on this issue, and for the manner in which the gentleman has delineated and described this legislation.

Particularly I want to commend the gentleman on his support of the House version of this legislation which, as the gentleman states, has been very carefully crafted following conversations which took place between members of our committee and members of the House Judiciary Committee as a result of which we were able to avoid sequential referral and thereby expedite the bringing of this measure to the floor of the House.

I certainly want to express support for that position and commend the gentleman for his support of it. I thank the gentleman for yielding.

Mr. BOLAND. I appreciate very much the comments of the distinguished gentleman from Illinois (Mr. MCCLORY).

Mr. Chairman, at this time I yield the remainder of my time to the distinguished gentleman from Kentucky, (Mr. MAZZOLI) chairman of the Legislative Subcommittee of the Permanent Select Committee on Intelligence, who has given so much of his time and effort to crafting this bill and bringing it to the floor today.

Mr. MAZZOLI. Mr. Chairman, I yield myself 7 minutes.

(Mr. MAZZOLI asked and was given permission to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Chairman, let me thank the distinguished gentleman from Massachusetts (Mr. BOLAND) for his very kind words. We in our committee have all worked hard, and that is why we have a bill today which has the near-unanimous support of the committee, of the intelligence community, and of the academic community. I think on that basis it reflects clearly the leadership of the gentleman from Massachusetts who was with us when we began this effort 3 years ago, two Congresses ago, and he is here today. I want to thank him for his leadership and his willingness to pay the price for the bill.

Mr. Chairman, I rise in support of H.R. 4, the Intelligence Identities Protection Act. It is a carefully crafted piece of legislation which responds in an effective and precise fashion to a problem of tremendous importance to our national security.

The problem, of course, is the public disclosure, by those who have had access to classified information, and by those who have not, of the identities of undercover U.S. intelligence personnel.

Such disclosures have a direct and harmful effect on vital intelligence collection activities and on the well-being of the men and women in such activities.

The Permanent Select Committee on Intelligence has spent a good part of the last 3 years studying the issues involved with intentional disclosure of agent identities. The issues have been complicated by the dual nature of the problem.

On the one hand, there are former CIA employees, like Phillip Agee, who have had official access to sensitive information and who disclose the names of their former comrades and other intelligence personnel. There is very little, if any, argument against the proposition that such disclosures, by those who are violating a position of trust, should be criminal offenses. These cases are clear.

Further, there is general agreement that the Government be required to prove only the fact of such an intentional disclosure. This contrasts with current U.S. espionage laws which require that the disclosure be made with intent to harm the United States or that the information disclosed relate to the national defense.

What is not so clear and where the complications arise are instances where publications, such as the "Covert Action Information Bulletin," disclose the names of undercover intelligence agents where the information disclosed came from examination of public-source documents and observation of personnel movements rather than from official access to classified information.

This vexing problem commanded a great deal of attention of the intelligence committee. And, the constitutional issues involved were subjected to searching scrutiny.

Because this was such a controversial area, some felt we should avoid the matter entirely and report a bill dealing simply with disclosures made by those who have had official access to classified data such as disaffected former employees.

The committee concluded, however, that half a solution was really no solution at all and that the deleterious effect of public disclosure of agent identities was just as serious when the perpetrator was one who obtained the information from other than classified sources.

Furthermore, the committee could find no beneficial effect or socially or philosophically desirable results whatsoever to flow from such disclosures.

Therefore, it was determined to proceed with legislation that would respond to both aspects of this difficult problem by means of a narrowly, precisely, and carefully crafted approach so to avoid constitutional pitfalls and so to fully protect first amendment rights.

The bill before the House today is such a carefully crafted measure and it received broad bipartisan support in the intelligence committee.

It would establish criminal penalties for intentional disclosure, to unauthorized persons, of any information identifying a covert agent.

The term "Covert Agent" is defined to include:

Employees of an "intelligence agency" (defined as the Central Intelligence Agency, the intelligence components of the Department of Defense, or the foreign counterintelligence or counterterrorism components of the Federal Bureau of Investigation (FBI), whose identities are classified and who serve outside the United States or have so served within the previous 5 years.

U.S. citizens whose intelligence relationships to the United States are classified and who reside and act outside the United States as agents of, or informants or sources of operational assistance to an intelligence agency or who are acting agents of or informants to the foreign counterintelligence or foreign counterterrorism elements of the FBI.

Non-U.S. citizens whose intelligence relationships to the United States are classified and who are present or former agents of, or present or former sources of operational assistance to, an intelligence agency.)

Under section 601(a), if the defendent had authorized access to the intelligence identity which was then disclosed the penalty is a fine of $50,000 or 10 years in jail, or both.

Under section 601(b), if the defendent learned, as a result of authorized access to classified information, the identity which was then disclosed, the penalty is a fine of $25,000 or 5 years in jail, or both.

In each case, the Government must prove that the information was disclosed intentionally, that the defendent knew that the information identified a covert agent, that the identity of the agent was classified, and that the United States was taking affirmative measures to conceal the covert agent's intelligence relationship to the United States.

Under section 601(c), if the defendent has had no access to classified information prior to a disclosure of covert intelligence personnel, the penalty is a fine of $15,000 or 3 years in jail, or both.

The Government, in addition to the elements previously mentioned in 601(c) cases, has to prove that the disclosure was part of an effort to identify and expose covert agents and that this effort was intended to impair or impede the foreign intelligence activities of the United States by the act of such identification and exposure.

Section 602(b) prohibits conspiracy charges or aiding or abetting prosecutions against those who have not actually disclosed information unless an intent to impair or impede the foreign intelligence activities of the United States can be proved, or unless the defendent has had authorized access to classified information.

Section 603 directs the President to establish procedures to insure the concealment of the identities of covert agents. Any department or agency so designated by the President must provide whatever assistance the President determines is necessary in order to maintain concealment of the identities of covert agents.

Mr. Chairman, I urge passage of this important legisation. It represents, I believe, a vote of confidence by the Congress for those dedicated employees of the clandestine service whom our Government sends overseas to collect vital information.

It also demonstrates to those foreign nationals who wish to aid our Nation's cause that the Congress of the United States is determined to protect their confidentiality and secret relationship with the United States.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I am happy to yield to the gentleman from Illinois (Mr. McCLORY).

Mr. McCLORY. I would like to ask a question regarding the effect of the amendment to section 601(c) adopted by the Intelligence Committee.

H.R. 4, as introduced, as I understand it, focused attention on the intent of the defendant in making a disclosure. Not at the result caused by it. In committee, the language "by the fact of such identification and exposure" was added to section 601(c).

My question is: Does this new language change the focus away from the defendant's intent and rather create a "results test"?

Mr. MAZZOLI. The answer to the gentleman's question is no.

The gentleman is quite correct in his analysis of H.R. 4 as introduced—that it focused on the defendant's intent. The change made to H.R. 4 by the Intelligence Committee did not alter this at all. To have created a results test would have required changing section 601(c) to read:

> Whoever intentionally impairs or impedes the foreign intelligence activities of the United States by disclosing the identities of covert agents. . . .

This we clearly did not do.

In sum, section 601(c) is only concerned with what a person intends in making a disclosure, not in what may or may not have been the result of his having done so.

□ 1100

Mr. McCLORY. If the gentleman will yield, I just want to thank the gentleman for his clarifying statement.

Mr. MAZZOLI. I have exhausted my time. I want to thank the gentleman from Illinois (Mr. McCLORY), who is the ranking minority member of our Legislation Subcommittee and a very active member of the full committee. Again I would just like to urge the

sympathetic attention and unanimous support of the House for this very necessary piece of legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. McCLORY. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Virginia (Mr. ROBINSON), the ranking minority member of the full Intelligence Committee.

(Mr. ROBINSON asked and was given permission to revise and extend his remarks.)

Mr. ROBINSON. Mr. Chairman, I rise in full support of H.R. 4. It was my pleasure to push for the passage of similar legislation in the last Congress, when time stalled it, and I am most pleased that we now have the opportunity to take final action on it here on the House floor.

I would like to first join the ranking minority member, the gentleman from Illinois, BOB MCCLORY, in terms of expressing my appreciation at the complete cooperation, understanding, and willingness to help that has been exhibited by the gentleman from Massachusetts (Mr. BOLAND), who is chairman of this committee.

The time is long passed for the Congress to pass a law to punish those who, with malicious intent, jeopardize our Nation's security by disclosing the identities of our undercover intelligence agents. No other action that we could take at this time could be more helpful to our dedicated intelligence personnel, our own personnel, than its timely passage. And, similarly, it would be equally helpful to send a message to those of other countries, who cooperate with our intelligence services, that the United States has finally moved to protect their identities as well. You can imagine the impact that unauthorized disclosures have had on these very special relationships.

It makes little sense to call for better intelligence on one hand and then not take the steps needed to provide the fundamental protection required by those who are collecting that intelligence or working sensitive covert actions.

I was comfortable with the language of H.R. 5616, as reported last year, as I am with the language of H.R. 4 as introduced this year, which I was pleased to cosponsor with our distinguished chairman. The earlier version has now been strengthened by the addition of a clarifying amendment, which has just been discussed for the benefit of my colleagues through the colloquy of the gentleman from Illinois and the gentleman from Kentucky, this strengthening, clarifying amendment that focuses more directly on those who are callously and systematically engaged in an effort to do great harm to our intelligence operations by "naming names" and "names with places."

Mr. Chairman, this bill meets the critical test of constitutionality. A recent Supreme Court decision in Haig against Agee held that—

> Agee's disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the government does not render his conduct beyond the reach of law.

The goal of the committee has been to produce not just a bill that is constitutional, but one that works to deter those who want to destroy our intelligence-gathering abilities.

Mr. Chairman, I join with our distinguished chairman, the gentleman from Massachusetts, and the other committee members who have worked so hard to develop a consensus on this bill—a consensus which very definitely is the product of the Legislative Subcommittee steered by Chairman MAZZOLI of Kentucky and ranking member MCCLORY from Illinois, and the other members of that subcommittee as already mentioned by our chairman.

H.R. 4 as reported by the full Intelligence Committee is a good and a fair approach to a difficult problem, and it deserves your support.

I urge its quick and favorable and long-overdue consideration.

Mr. McCLORY. Mr. Chairman, I yield myself such time as I may consume.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Chairman, I rise in support of H.R. 4, the Intelligence Identities Protection Act. This legislation—which is a direct outgrowth of a bill first proposed over 5 years ago by the distinguished Republican House leader (Mr. MICHEL)—is sorely needed to put an end to the activities of those who seek to subvert the security of our Nation by exposing the identities of our covert foreign intelligence agents.

Mr. Chairman, we would truly be derelict in our duty as the people's elected Representatives if we allow the existing abominable situation to go unrectified. The 1975 assassination of Richard Welch in Athens after being named as a CIA officer in Counter Spy magazine must not go unanswered. Last year's July 4 machinegun attack on the house of one U.S. Embassy employee in Jamaica, and the subsequent thwarted terrorist attack on another employee's home a few days later, after each was named as a CIA officer by Covert Action Information Bulletin editor Louis Wolf, must not go unanswered. And, the terrible harm to our national security caused by the wanton disclosures by misdirected and irresponsible individuals must not go unanswered. We must act now.

Mr. Chairman, this bill would punish those who engage in an effort intended to impair or impede U.S. intelligence activities and who further that effort by making a disclosure of the identity of one or more covert agents. However, this bill would not punish those who make any other statements, deliver any other speeches, or write any other articles aimed at impairing such activities—no matter how inaccurate or ill-advised.

In other words, Mr. Chairman, this bill would in no way affect the activities of those who seek to inform, not destroy.

Mr. Chairman, I cannot actually find any significant objection to achieving the goals embodied in the "Intelligence Identities Protection Act". The controversy surrounds the means employed.

The approach proposed by the Intelligence Committee—after extensive hearings, staff work, and committee debate—is three tiered. The first two tiers apply to individuals who gain access to information identifying covert intelligence agents through authorized or quasi-authorized fashion.

The third tier, section 601(c), would punish anyone who discloses an agent's identity. But only if the disclosures are made "in the course of an effort to identity and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure".

In the view of the Intelligence Committee, and with this I firmly agree, the intent requirement of section 601(c) provides the Government with a strong and effective new law—while well protecting legitimate journalistic endeavors and avoiding constitutional objections.

In studying section 601(c), it is interesting to compare it with existing law. As to the crucial issue of criminalizing the disclosure of information obtained other than from classified sources, section 798 of title 18 prohibits anyone from disclosing cryptographic information or any information obtained though communications intelligence. And, section 224 of the Atomic Energy Act (42 U.S.C. 2274) prohibits disclosure of atomic energy information. Both of these statutes apply to information no matter how obtained.

Mr. Chairman, there has been much discussion in the weeks leading up to this body's consideration of this legislation as to the relative merits of this bill's intent standard and the reason to believe standard presently embodied in the bill being considered in the other body. After a great deal of consideration of both bills. I have found H.R. 4 to provide the most effective tool for putting an end to the damaging disclosures of the identities of covert agents.

H.R. 4 and the bill being considered in the other body (S. 391) are actually very similar. However, while—as has been noted—H.R. 4 requires that an individual be shown to have acted with intent to impair or impede the foreign intelligence activities of the United States, S. 391's version would require a showing that the individual had

"reason to believe" that such would occur.

On balance, "reason to believe", as in S. 391, is easier to prove than specific intent, as in H.R. 4, for the former is an objective test—that is, what would a reasonable person believe—whereas the later requires proof of the actual state of mind of the person on trial—that is, what did the defendant, Joe Smith, really intend to accomplish by disclosing the agent's name. This, on the surface, seems to favor the Senate standard, but there are serious drawbacks to it—drawbacks which ultimately weigh against it decisively.

Under S. 391 a defendant would try to show that a reasonable person—and, therefore, he—would not have had "reason to believe" that U.S. intelligence activities would be impaired by his disclosure. Because reality is relevant to what a reasonable person—and, therefore, what the defendant—would or would not have "reason to believe", a valid defense, under the "reason to believe" standard could include a showing that the activities of U.S. intelligence agencies were substantially the same after the disclosure of the agent's identity as they were prior to it. This could force the Government to disclose a great deal of sensitive, classified information at trial notwithstanding the passage of last year's graymail bill—as the defendant would be able to force from the Government information in support of his position. For example: What was CIA doing in country X before the disclosure? What is CIA doing there now?

H.R. 4's intent standard, on the other hand, totally ignores the actual effect a disclosure might have had and therefore would not allow for such a defense because even if the disclosure had no effect on U.S. intelligence activities, this would not serve to disprove the defendent's intent. This would be analogous to a defendant charged with attempted murder pleading that the fact that the alleged victim is still alive proves that the defendant did not intend to kill him.

I believe that H.R. 4, on its own and read in the light of existing law, more than passes constitutional muster. In the end, of course, laws, to be fair, must be applied fairly. Only a law that is fair on its face and in its application can have desired social effects within constitutional bounds.

H.R. 4, as reported by the Intelligence Committee, is a good and fair approach to a difficult problem. Both the CIA and the Department of Justice believe that it can effectively meet the needs of our intelligence community. It deserves your support.

Mr. Chairman, I urge the House to pass H.R. 4—without amendment.

Mr. MAZZOLI. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Georgia (Mr. FOWLER), a very helpful member of our committee.

(Mr. FOWLER asked and was given permission to revise and extend his remarks.)

Mr. FOWLER. Mr. Chairman, I rise in support of H.R. 4, the Intelligence Identities Protection Act, as reported by the House Intelligence Committee. While the clear intent of this measure is to maintain vital U.S. intelligence-gathering capabilities and to penalize those who wantonly seek to weaken such capabilities by placing our intelligence operatives in jeopardy, most of the concern about H.R. 4 centers on the bill's potential impact on first amendment rights. Therefore, I will focus my remarks on that area.

It is my firm belief that H.R. 4 addresses a real and compelling problem, that it successfully passes the stringent tests which are properly applied to any attempt to legislate restrictions on freedom of expression, that it devises an appropriate and effective response to an identified problem, that it is not overbroad in its coverage, nor will it have a chilling effect on public discussion or criticism of intelligence operations and policy.

NEED FOR THE LEGISLATION

There is general recognition that U.S. human intelligence-gathering programs have suffered in recent years. This is partly attributable to administrative and budgetary decisions that have attempted to respond to changing circumstances and priorities for U.S. intelligence. Human intelligence-gathering capabilities have been also affected by the reaction against the abuses of authority within the executive branch which were uncovered by congressional and journalistic investigations in the early seventies. It is not clear what we in the Congress can or should do about these problems.

But, in the case of a third obstacle to our human intelligence programs there should be far less uncertainty. I am referring, of course, to those instances where the U.S. intelligence community has been subjected to a systematic effort, by certain individuals and publications, to expose the identities of its agents for the express purpose of hampering its ability to operate clandestinely overseas in the interest of our country.

To illustrate, former CIA agent Phillip Agee has written two books—"Dirty Work: The CIA in Western Europe" and "Dirty Work 2: The CIA In Africa"—which revealed the names of over 1,000 alleged CIA agents. Agee's magazine Counter Spy had similarly sought to expose American intelligence operatives and one of the individuals it identified, Richard S. Welch, who was a CIA station chief in Athens, Greece, was subsequently murdered in front of his home.

Covert Action Information Bulletin, which succeeded Counter Spy and which contains a separate section specifically devoted to naming names of covert agents, claims to have disclosed the names of over 2,000 CIA officers. In July of last year, the coeditor of the publication, Louis Wolf, publicly charged that Richard Kinsman and 14 other U.S. Embassy officials in Jamaica were CIA agents. Less than 48 hours later Mr. Kinsman's home was attacked by submachineguns and explosives.

Such disclosures would be reprehensible enough if the harm were limited to individual intelligence operatives. However, the continuing exposure of the identities of American intelligence agents has significantly damaged the ability of our intelligence community to fulfill its primary responsibility of supplying policymakers with detailed and accurate information about important developments abroad. This damage results from both the loss of experienced agents, through forced retirement or relocation, and the loss of confidence among potential sources of sensitive foreign intelligence information about our ability to protect their identities.

Current law is demonstrably insufficient in combating deliberate disclosures of U.S. intelligence identities. Former Attorney General Civiletti stated that:

> Existing law provides inadequate protections to the men and women who serve our nation as intelligence officers. They need—and deserve better protection against those who would intentionally disclose their secret mission and jeopardize their personal safety by disclosing their identities.

The most telling proof of the need for the legislation before this House today lies in the fact that none of the willful disclosures I just mentioned have led to indictments under our espionage and other laws designed to protect classified information.

FIRST AMENDMENT QUESTIONS

As I stated at the outset, the major controversy surrounding H.R. 4 involves the issue of freedom of speech. This is as it should be, because there is no area requiring greater care in our duties as legislators than that of free speech, and I would hold with Jefferson that when we are faced with competing claims between governmental authority and a free press we should display a bias toward the latter.

But no right, not even first amendment ones, can exist as an absolute or in a vacuum. In the words of that great parliamentarian Edmund Burke:

> Abstract liberty, like other mere abstractions is not to be found. . . . Liberty, too, must be limited in order to be possessed.

This viewpoint finds ample support in a multitude of judicial interpretations of the first amendment, spanning the entire history of our country.

The document "The Constitution of the United States of America, Analysis and Interpretation," prepared for the 92d Congress, states of the original intent of the drafters of the first amendment that,

> Insofar as there is likely to have been consensus, it was no doubt the common law view as expressed by Blackstone.

On the question now at issue Blackstone wrote:

The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published . . . To punish . . . any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the perservation of peace and good order, of government and religion, the only solid foundations of liberty.

Concurring in the case of Whitney against California (1927) Justice Brandeis concluded that free speech rights could be restricted "if the particular restriction proposed is required in order to protect the State from destruction or from serious injury, political, economic, or moral."

In the 1950 case of American Communications Association, CIO against Douds, the Supreme Court found:

Although the First Amendment provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself against unlawful conduct, and under some circumstances, against incitements to commit unlawful acts. Freedom of speech thus does not comprehend the right to speak on any subject at any time.

The Court provided more specific guidance in the 1966 case of Elfbrandt against Russell:

A statute touching (First Amendment protected) rights must be "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state." . . . Legitimate legislative goals "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

Finally, in Broadrick against Oklahoma (1972), the Court declared:

It has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has given way to other compelling needs of society.

I challenge anyone to claim that the systematic disclosure of overseas intelligence operatives does not present "a clear and present danger to a substantial interest of the state."

I challenge anyone in this Chamber to disagree with the House Intelligence Committee's finding with respect to the disclosures made by these publications:

The unauthorized disclosure of the names of undercover intelligence agents is a pernicious act that serves no useful information function whatsoever. It does not alert us to abuses; it does not further civil liberties; it does not enlighten public debate; and it does not contribute one iota to the goal of an educated and informed electorate. Whatever the motives of those engaged in such activity, the only result is the disruption of our legitimate intelligence collection programs—programs that bear the imprimatur of the Congress, the President and the American people. Such a result benefits no one but our adversaries.

TERMS OF THE BILL

The Intelligence Identities Protection Act addresses the vulnerability of our overseas intelligence operatives in two ways. First, it criminalizes the disclosure of their identities, and second it requires the President to develop more effective methods for preserving their cover. While the former provisions have drawn most of the attention, I believe that in the long run the portions of the legislation concerning improved cover, and the heightened attention to this area they will produce, will prove to be more significant in protecting our intelligence agents.

With regard to the criminal provisions, H.R. 4 establishes three categories of offenses for the intentional disclosure of information identifying covert operatives to unauthorized persons.

The first category includes those who have had authorized access to classified information specifically identifying a covert agent while the second group involves individuals who learn of a covert identity "as a result of having authorized access to classified information" though not necessarily to specific information identifying the covert agent. A person in either of these two categories is criminally liable under H.R. 4 if they intentionally disclose any information correctly identifying a covert operative to an individual not authorized to receive classified information. Furthermore, they must know that the information will in fact identify the agent and that the United States is making an effort to conceal that identity.

Penalties for the first category, those who have had access to specific classified information identifying the intelligence operative, would be a fine of up to $50,000, imprisonment for up to 10 years, or both. For the second category, the penalties would be somewhat lighter, up to a $25,000 fine and/or 5 years imprisonment, because it is assumed that they have violated a lower level of public trust than those who had direct, authorized access to intelligence identities.

The main controversy surrounding this legislation centers on the third category of offense, which covers those cases where the offender did not have authorized access to classified information. Since this group could encompass anyone who revealed the name of an American intelligence official—including journalists—special care had to be given to protect first amendment rights of free speech.

The committee did this by limiting criminal liability in the third category to those who disclose agents' identities in the course of an effort to identify and expose covert agents, which effort is intended to impair or impede U.S. foreign intelligence activities by the fact of such identification and exposure. In addition, to fall into this category an individual would also have to meet the standards of proof established for the first two categories: That the disclosure correctly identifies a classified covert identity, that the disclosure is intentional, that the discloser knows that the revealed information will in fact identify the intelligence agent, and that the discloser knows that the U.S. Government is taking affirmative action to conceal the agent's identify.

Penalties for this category of offender are less severe than for the other two: Up to $15,000 in fines or up to 3 years imprisonment, or both.

Let me be very clear that the committee's intent in this area was not to criminalize exposes by legitimate journalists, nor revelations by whistleblowers, nor efforts by newspapers, churches, or universities to determine whether, in violation of their own policy, an employee is also an intelligence agent. What was intended was to provide some narrowly constructed statutory protection for overseas U.S. intelligence officials against systematic disclosures by certain publications who have undertaken to uncover and publicize wholesale lists of individuals whose only crime seems to be their association with U.S. foreign intelligence operations.

The two major remaining sections of the Intelligence Identities Protection Act define the intelligence operative whose identities are to be protected and establish the defenses that are available for an individual charged under the terms of the bill.

Briefly, the following intelligence identities are covered by H.R. 4 protection: Officers or employees of a U.S. intelligence agency whose identity is properly classified and who are serving, or have served within the past 5 years, outside the United States; U.S. citizens inside the United States whose identity is properly classified and who are agents of, informants, or sources of operational assistance to the foreign counterintelligence or counterterrorism operations of the FBI; U.S. citizens outside the United States whose identity is properly classified and who are agents of, informants, or sources of operational assistance to a U.S. intelligence agency; and non-U.S. citizens whose identity is classified and who are present or former agents of a U.S. intelligence agency or who are informants or sources of operational assistance to a U.S. intelligence agency.

Finally, defenses to prosecution are established to include: Cases where the United States has publicly acknowledged or revealed the intelligence relationship in question; nonparticipation in the actual disclosure of the information identifying a covert agent, except where the individual acted in the course of an effort to identify and expose covert agents with the intent to impair and impede U.S. foreign intelligence or has authorized access to classified information; and

cases where the information in question is transmitted to the House and Senate Intelligence Committees.

CONCLUSION

An effective intelligence-gathering capability is as important as, and in some cases more important than, armed forces in protecting our national security.

Accurate information on events overseas, whether it involves weapons developments by potential adversaries or decisions affecting the price and availability of a critical resource like petroleum, is an invaluable aid in formulating our foreign and defense policies. Incorrect information, on the other hand, can lead us to make costly and sometimes dangerous mistakes.

As is true of two pieces of legislation reported recently by the Intelligence Committee and enacted by the Congress last year, namely the Classified Information Procedures Act and the Intelligence Oversight Act, the Intelligence Identities Protection Act is an attempt to enhance the ability of our intelligence community to perform its assigned role in a manner consistent with our national interests and values.

I urge a favorable vote on H.R. 4.

□ 1130

Mr. McCLORY. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. ASHBROOK), a distinguished and valuable member of the Select Committee on Intelligence.

(Mr. ASHBROOK asked and was given permission to revise and extend his remarks.)

Mr. ASHBROOK. At least before I say what I am about to say.

Mr. Chairman, a few minutes ago my friend and colleague, the gentleman from California (Mr. ROUSSELOT) said, "Give me a very brief description of why you are offering your amendments and the difference with the Committee version."

My response to him was the difference is that my amendment would knock out of the American Civil Liberties Union compromise in the language of this bill. It is just that simple.

I would give the gentleman five good reasons why we should not support H.R. 4 as it stands now. Five good reasons why we should support either the Senate version or my amendments to bring H.R. 4 up to speed.

First, I will lay it out flat. The language that I object to is American Civil Liberties Union language. Our committee accepted this as a compromise. I understand that. The compromise was necessary, they think, because we are so anxious to get a bill that protects the agents that we would even make that kind of compromise with the ACLU to get H.R. 4 passed.

I will not make this compromise and I hope the Members of this body do not. If anybody wants to take this charge to task, I can give them chapter and verse, where the language came from and how it got there. We have the ACLU internal documents. There is no doubt in my mind, I will say it factually, it is not our language, it is theirs.

The President of the United States supports and prefers the language that I have offered and supports the Senate version which is identical.

I hope most of the Members got the letter that I sent out last night which contained the President's own letter. That letter states that—

Any change to the Senate version would have the effect of altering this carefully crafted balance. I cannot overemphasize the importance of this legislation. I hope I can have your support in reporting S. 391 without amendments.

The third point I would make is that the people who know the most about it, the Central Intelligence Agency, support and prefers the Senate language. A letter is used by the opposition that indicates the CIA would accept the compromise language. True, but read the letter carefully. It says they prefer Senate 391. The operative word is "prefer."

For the Association of Former Intelligence Officers, the group that knows the most, those that are out in the field and—I for one am sick and tired listening to people at the top. Listen to those in the field, listen to those who live with the law out in the trenches. They want S. 391. They want my amendments. That is the fourth reason.

Fifth, talk to the wives, the families of those who have been out in the field, who have had their families, their homes, their husbands, attacked by agents of enemy powers, as a result of a disclosure of names of their loved ones.

I put a letter in the RECORD last night—unfortunately it did not get printed because I made a mistake, I put too much extraneous matter in, which I often want to do.

I included a letter by Mrs. Sheila Kinsman in my remarks, a three-page letter, pleading and imploring the Members of Congress to pass the most stringent language possible to protect people like her husband who was the target of attack in Jamaica after the disclosure of his name by the enemies of our country, not just the CIA, who we are talking about today and trying to provide good language which will insure their prosecutors.

Five good reasons why either Senate 391 or my amendments to H.R. 4 are necessary. I support H.R. 4 with amendments. But, to repeat, I see no reason whatsoever that the Members of this body should accommodate what we think is right to the requests, the demands or whatever we want to call it of the American Civil Liberties Union. We simply should not let Jerry Berman, and not let Morton Halperin, have that kind of influence on this body.

I understand how it was done. I recognize why it was done. And in my remarks, if my colleagues will read my dissenting opinion in the committee report, it is very clearly shown exactly how it happened.

On July 13, 1981, Halperin and Berman visited the CIA Headquarters building in Langley to discuss a compromise on the names of agents bill in exchange for modifying the language in section 501(c) which is now 601(c). They promised that their supporters would not try to delay this bill.

Three days later, our committee met and adopted the compromise as laid out by the American Civil Liberties Union. It was done in good faith—I understand why—because there is a desire to protect the agents, there is a desire to make sure this bill is not again delayed. Very possibly it would have been delayed had not that concession been made. We don't have to ratify that concession and we should not.

I did not agree to that compromise. I did not agree to it then, I do not agree to it now, and I hope the majority of this body will support my amendment.

[Mr. ASHBROOK addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

I want to say very forthrightly to the gentleman, as far as the language in this legislation is concerned, I am not aware of the gentleman's statement of its origin with the ACLU. I do know that in my conversations with representatives of the CIA that they have indicated that they would support this language, and I likewise have a letter from the Association of Former Intelligence Officers, just dated yesterday, which states that they support the early enactment of H.R. 4.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. ASHBROOK) has expired.

Mr. McCLORY. Mr. Chairman, I yield 1 additional minute to the gentleman from Ohio (Mr. ASHBROOK).

Mr. McCLORY. The letter states they support the early enactment of H.R. 4 either with the version in H.R. 4 or S. 391.

So that I am very anxious to cooperate with them, too, and I feel that they are satisfied with the language in the House bill.

Mr. ASHBROOK. My colleague very carefully and properly made a distinction which I do not make. He said they support it. He also knows what they prefer. Will he state to the Members of this body what they are on record as saying, what they prefer? They prefer the Senate language, do they not, in the same letter the gentleman received? It indicates they prefer Senate 391? The gentleman has the

letter in front of him, I would say to my colleague.

Mr. McCLORY. In the letter that I have they just state that they are concerned about the importance of this legislation and they urge the early enactment of either S. 391 language or H.R. 4 language.

Mr. FOWLER. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Georgia.

Mr. FOWLER. I thank the gentleman for yielding.

Would my distinguished colleague from Ohio not agree—as I think we can agree—that the CIA recognizes the acute nature of this problem, which all of us are attempting to address, and the CIA, and all of our defense establishments, prefer that version which will stand constitutional muster?

The CHAIRMAN. The time of the gentleman from Ohio (Mr. ASHBROOK) has again expired.

Mr. McCLORY. I yield 1 additional minute to the gentleman from Ohio (Mr. ASHBROOK).

Mr. FOWLER. If the gentleman will yield further, I would like to refresh the memory of my colleague in the well with the testimony, before our committee of the former CIA counsel, Daniel Silver, and I quote:

It is from my point of view as a lawyer clear to me that without a specific intent element a statute that applied to someone who dealt only with unclassified information and phenomena would have serious constitutional problems, but this bill which your committee has very carefully drawn avoids those problems.

The specific intent was put in there not because of who suggested it or who proposed it after 2 years of debate, but to try to meet constitutional strictures, and that is why a specific intent standard is preferred by this committee, the majority of our committee, rather than "reason to believe"——

Mr. ASHBROOK. If I may reclaim my time, laying his opinion against that of the Attorney General of the United States, the President of the United States, the person most responsible for discharging the law, indicates the Attorney General advises him the Senate version of this legislation is legally sound from a constitutional standpoint.

The CIA counsel says it is legally sound from a constitutional standpoint. They indicate both versions.

I would acknowledge the gentleman's version is and I hope the gentleman will not try to say S. 391 is not constitutionally sound because all of the sound authorities, the Attorney General, the CIA, our staff, virtually everyone that has dealt with both of them say both versions are sound. I hope the gentleman would not try to indicate that is not the case.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. ASHBROOK) has expired.

Mr. MAZZOLI. Will the chairman advise the gentleman from Kentucky of the time remaining.

The CHAIRMAN. The gentleman from Kentucky (Mr. MAZZOLI) has 11 minutes remaining.

Mr. MAZZOLI. Mr. Chairman, I yield 1 minute to the gentleman from Ohio (Mr. ASHBROOK).

Mr. FOWLER. If the gentleman will yield further, in response to my friend from Ohio, I believe that the overwhelming weight of the testimony from experts in the field, both constitutional scholars and those within our Nation's intelligence agencies, whom we are trying to protect, evidenced serious concerns that the standard that the gentleman from Ohio proposes would not meet constitutional tests because it would criminalize disclosures of information derived from unclassified sources by people who have not had access to classified information on the basis of a negligence standard, a standard most often used for torts.

□ 1130

In my statement, I attempted to trace the constitutional history, the case history of precedents requiring specific intent when we criminalize first amendment activity.

I would simply urge that that it is as a result of the committee's 2 years of deliberations on this matter under the leadership of Chairman BOLAND and subcommittee Chairman MAZZOLI.

Mr. ASHBROOK. Mr. Chairman, if my colleague will let me take the last 15 seconds, we clearly cannot discuss it in 1 minute. We will under my amendment.

Mr. MAZZOLI. Mr. Chairman, I yield such time as he may consume to a distinguished member of our subcommittee, the gentleman from Indiana (Mr. HAMILTON).

(Mr. HAMILTON asked and was given permission to revise and extend his remarks.)

Mr. HAMILTON. Mr. Chairman, I rise in support of H.R. 4, the Intelligence Identities Protection Act.

Mr. Chairman, most Americans are shocked and dismayed when they see:

A former CIA employee previously entrusted with classified material publicly revealing the names of covert CIA agents; or

When they learn of the various groups of our citizens who systematically try to ferret out and publish the names of agents in order to harm U.S. intelligence activities.

One such group, publishing the Covert Action Information Bulletin, operates within a few steps of the Capitol, and regularly runs a feature titled "Naming Names," revealing 10 to 20 agents per issue.

However, Americans are even more shocked and dismayed when they learn that there is basically no criminal statute to specifically prohibit the unauthorized release of such classified information. Prosecuting under the general and vague espionage laws would require the Government to reveal additional sensitive information, and thus may itself cause additional harm to our intelligence capabilities.

The result has been a hesitancy by the Justice Department to prosecute, and that unfortunately has led to a significant increase in the publication of books, newspapers, and magazines purporting to disclose the names of U.S. covert intelligence agents. It has been estimated that over the past few years, more than 2,000 such names have been publicly revealed, and yet not even one individual has been imprisoned for releasing any of them.

Disclosure of the names of agents may take many forms:

From the disgruntled former CIA officer who decides to turn on his fellow workers, to the respected reporter who may identify an agent incidentally in the course of a legitimate exposé on newspaper reporters working covertly for the CIA.

In this bill, H.R. 4, we are not proposing that every individual revealing an agent's identity under any circumstances be subject to criminal penalties. Such an across-the-board prohibition would have a chilling effect on free speech and would no doubt be unconstitutional.

Rather, we are restricting the legislation only to three types of unauthorized disclosure:

First, disclosure by Government officials and others entrusted with access to classified information that identifies covert agents;

Second, disclosure by those with access to classified information that allows them to discern such identities; and

Third, disclosure by those without access to classified information who are in the business of ferreting out and naming names in order to disrupt U.S. intelligence activities.

The bill does not apply to casual discussion, political debates, legitimate journalism, and the like.

Although the committee was unified in pursuing this goal, it proved extremely difficult to find precise language to do exactly what we wanted. The section addressing those in the business of naming names without access to classified information, section 601(c), presented the major difficulties.

On the one hand, we wanted to make the language narrow enough so that we did not also make criminal, for example, the actions of legitimate journalists. On the other hand, we did not want to make the language too narrow so that groups like the publishers of the CAI Bulletin could easily sidestep the law by simply redescribing or restructuring what they are doing.

The task provided especially troublesome: Since the time the committee first took up trying to draft such language some 3 years ago, we probably

have seriously considered more than 15 different versions of this section. The versions all involved subtle changes in emphasis. We changed the language from:

Talking of patterns of activities to talking of efforts;

From talking of harming the effectiveness of covert agents to talking of harming the effectiveness of U.S. intelligence activities; and

From talking of purposes to talking of intentions.

The language that we finally agreed on in H.R. 4 as reported strikes a reasonable balance, and I believe that Chairman BOLAND and subcommittee Chairman MAZZOLI should be congratulated. In essence, our final language in section 601(c) properly focuses only on those in the business of naming names by requiring:

That they must be engaged in a general effort to identify and expose covert agents;

That the disclosure must be intentional, consciously and deliberately willed; and

That they must have a specific intent to harm U.S. foreign intelligence activities by the disclosure.

I believe that this language and the expanded legislative intent in our committee report is a good and reasonable attempt to include under the law those we wanted to include, and exclude those we wanted to exclude. No one would maintain that our language is infallible or that it is precisely what everyone wanted. However, it presents a reasonable compromise.

Our full committee accepted it by a clear majority vote, and the Judiciary Committee found it acceptable enough not to request sequential referral;

The CIA has found it acceptable and the Justice Department says that it could satisfactorily prosecute under it;

Legal scholars before the committee testified that it appears constitutional; and

Even outside groups on divergent ends of the political spectrum who publicly murmur about the bill have said privately that they could live with it.

Today we will hear criticism on both sides: Some may argue that we have drawn the language too tight; others that we have not drawn the language tight enough. I believe that we have carefully weighed the alternatives and that we have finally arrived at a proposal that strikes a reasonable balance:

We have drafted language that makes illegal, disclosure by those entrusted with access to classified material or by those in the business of naming names in order to harm U.S. intelligence; and

We have carefully avoided being overzealous and possibly ensnaring unintentionally those we do not wish to catch, that is, legitimate journalists or whistleblowers.

Mr. Chairman, I urge the adoption of H.R. 4.

Mr. MAZZOLI. Mr. Chairman, if the gentleman from Illinois will indulge the gentleman from Kentucky, I would like to yield 2 minutes to the distinguished gentleman from California (Mr. EDWARDS), and then get back into the regular order.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Chairman, I rise in opposition to H.R. 4. The bill creates three new criminal offenses. The first two prohibit persons who have had authorized access to classified information from revealing the identity of certain covert intelligence agents. I support the effort to punish those who would abuse their positions of trust to the detriment of the lives and safety of our intelligence agents overseas as well as U.S. national security interests.

On the other hand, the third category, section 601(c) of the bill, however well intentioned in its effort to prevent exposure of our covert agents, tramples on protected first amendment freedoms. For the first time in American history, the publication of information obtained lawfully from publicly available sources would be made criminal.

I recognize and applaud the efforts made by the Intelligence Committee to narrow the scope of section 601(c) to keep it within constitutional bounds. Nevertheless, it is my firm belief, which is supported by many noted constitutional experts, that no amount of tinkering can rehabilitate a law which criminalizes constitutionally protected freedoms of speech, press, and political expression.

Moreover, the bill allows no exception where disclosures are aimed at revealing illegal activity. Oversight of our intelligence activities, traditionally exercised by all the American people, the press, and the Congress will instead be relegated solely to the two already overburdened Intelligence Committees. Recent events concerning the disturbing activities of the top echelons of the CIA demonstrate that greater accountability is necessary rather than less.

The best solution is to concentrate our efforts to improve the cover provided the CIA, and any other covert agents operating on our behalf overseas, not to create criminal penalties which stem the flow of information only to our own public and do little to protect our agents from hostile powers overseas.

I urge you to vote against this bill.

And, Mr. Chairman, I ask unanimous consent to revise and extend my remarks.

I firmly believe officers, employees, and sources that operate covertly on behalf of American foreign intelligence must be protected from harm and exposure. I share the alarm of my colleagues arising from callous and irresponsible disclosure of names of covert agents. However, I believe that the goal of maintaining secrecy and minimizing risk of harm can be achieved by less onerous means.

The portion of H.R. 4 which I question is section 601(c). This section is aimed primarily at private citizens and the press who gain knowledge of agent identities from either public or classified sources. In both instances, first amendment interests are compromised.

The Intelligence Committee attempted to alleviate the adverse impact on the first amendment by adopting language that narrows the intent requirement. Criminality hinges on a finding that the identification was made "knowingly," with "an intent to impair or impede the foreign intelligence activities of the United States" and "in the course of an effort to identify and expose covert agents," and by adding a requirement that the disclosure intend "to impair or impede the foreign intelligence activities of the U.S. by the fact of such identification and exposure." While I applaud the committee's efforts, I remain convinced that no amount of tinkering can render this section constitutional, as long as it seeks to criminalize publication of information already in the public domain. These judgments all are highly subjective, thereby leaving the door open for less cautious officials to level this provision at a broad class of individuals, many acting within the Constitution.

The requisite intent can be inferred whenever the publication exposes and thereby diminishes the effectiveness of an intelligence agent or activity. Further, the intent requirement itself may have "the effect of chilling legitimate critique and debate."

In addition, it is clear that the name need not actually be revealed to constitute "identifying information." In some circumstances, simply noting the agent's title and location may be sufficient to reveal his identity. Thus, the number of details that must be omitted, and the consequent loss of credibility, is also a vague, expandable concept.

Finally, the concept of "in the course of an effort" offers no real protection. As a Society of Professional Journalists witness noted during the debate on this bill last year, "a journalist who is assigned to cover the intelligence community on a regular basis may indeed establish a pattern of reporting the names of agents or sources in the course of legitimate coverage of the CIA."

Furthermore, even if the revelation was a single story or a single incident, it is not clear that the act of investigating the story and preparing to publish it are insufficient to meet the Government's concept of "effort." The Department of Justice repeatedly has emphasized that the effort need not consist of a pattern of disclosure, but rather may be simply a pattern of acts with a purpose of disclosing.

I am not alone in this view. Distinguished constitutional scholars from around the country have also criticized section 601(c) and its predecessors as being both unwise and unconstitutional.

Consider this from Stephen Saltzberg of the University of Virginia Law School:

When it comes to punishing people who have figured out the identity of an agent on the basis of information available to the public, I think there are enormous problems to overcome. In fact, they cannot be overcome when all is said and done.

I recognize that the intent element of Section [601(c)] is the thread of hope for saving the statute, but in my view the thread is not strong enough. To punish people who want to impair or impede the foreign intelligence activities of the United States is to threaten anyone who favors a cutback in foreign intelligence gathering, or controls on the manner in which information is gathered; and it is a threat that cannot withstand scrutiny under the First Amendment. If a person does research in the library or archives and learns that X has been involved in intelligence work in Iran or Afghanistan, and the person believes that the nature of the work is not suitable for our government, can this person's mouth be closed by a statute like Section [601(c)]? Is it really permissible to prevent people from trying to get the government to change its ways by publicly disclosing what has been going on in order to criticize it? I doubt it. The line between an intention to impair the intelligence activities of the United States and an intention to seek a modification of the intelligence activities of the United States is one that is too fine for me to perceive.

Of course, the First Amendment involves balancing of interests. The need for the United States to protect its officers and agents is surely real and great, but the First Amendment is at its strongest when people are speaking out against the government, criticizing what it and its agents are doing. And I think the balance here will be in favor of speech.

Section 601(c) prohibits publication of identifying information even if the reporter or private individual derived the identity or identities wholly from public sources. This includes disclosures based upon inferences drawn from the Government's own nonclassified documents; it includes the publication of "common knowledge" as to who is a CIA agent or source in a particular area; it includes the revelation by an organization, such as a missionary church, newspaper, or university, based on its own internal investigation, that some of its members—contrary to the organization's policy—have acted as sources for the CIA; it includes republication of disclosures made by others. The limit on how public this information must be before prosecution will is left to the discretion of political appointees.

Moreover, section 601(c) criminalizes disclosures under a wide variety of circumstances. Try as the House Intelligence Committee did to limit the bill, I still believe it will forbid both wanton and callous disclosures as well as those that serve a socially useful purpose. It will create an unprecedented dilution of the notion of what constitutes freedom of speech and the press by criminalizing the utterance of publicly available information without a showing that the national security is at stake; indeed, there is no requirement that any adverse impact be felt by reason of the disclosure in order to constitute a crime.

I am also concerned about the wide range of individuals covered by this legislation. I believe this overinclusiveness adds to the constitutional problems of this bill.

A covert agent is defined to include not only intelligence officers or employees serving covertly outside the United States, but also anyone who is a "present or former agent of, or a present or former informant or source of operational assistance to an intelligence agency."

"Informant" is defined broadly as "any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure." It is clear, therefore, that thousands of individuals fit this description, and that the bill is primarily a source protection bill for the CIA and the FBI. Regardless of the merits of their need for protection, the breadth of the definition broadens the restraint of free speech.

Furthermore, it is not clear that protecting the identity of sources, who may be in no greater peril than any other law enforcement informants, weighs as heavily against the need for open discussion of American foreign affairs as does the protection of employee identities.

Indeed, the original position of the Attorney General, when this bill's predecessor was under discussion last Congress, was solely to protect from harm the "men and women who serve our Nation as intelligence officers." Likewise, the FBI Director, in seeking FBI coverage, originally spoke only of "employees."

This expanded purpose should alert us to the danger of future additions to the definition of disclosures that impair American intelligence activities. Congress could criminalize the disclosure of many other matters derived from public information, such as the content of the covert activities themselves, the methods used, and so forth. The fact that those activities may have been in clear violation of American law or policy would be no defense. How will the line be drawn when so much information relevant to public debate arguably could impair or impede intelligence activities or foreign relations or national defense?

For these reasons, I believe this coverage is vastly overbroad, and fundamentally at odds with a free society. It is also unnecessary. Section 601(c) simply misses the mark—it aims the arsenal of the criminal law at the entire populace. But all the available evidence indicates that the true culprit is the combination of sloppy secrecy procedures and unauthorized disclosure of classified information.

In other words, section 601(c) of the Intelligence Committee bill attacks a phantom problem—private citizens culling through public documents and sources. It thereby diverts attention from the real heart of the problem, which, as the CIA itself admitted, is "the disclosure of sensitive information based on privileged access * * * by faithless government employees * * *." This problem can be dealt with by punishing those employees and former employees who breach their trust by revealing identities or by providing assistance to others in identifying covert agents.

Moreover, if indeed it is possible to glean identities from public information or documents, then it is the responsibility of the CIA and the President to remove those indicators from the public domain and to improve the procedures for insuring effective cover. Criminalizing disclosures stemming from sloppy secrecy procedures, on the other hand, will only tend to lull the Agency into inaction. Surely if private citizens have been able to infer identities from public sources, so, too, has the KGB.

As the House Permanent Select Committee on Intelligence act "compelled to note that provisions for the concealment of intelligence operative are not fully adequate.' The burden must be on the executive branch generally, and the intelligence community in particular, to remedy this situation."

Accordingly, the committee adopted a provision requiring the President to promulgate procedures that will help to rectify this situation. I believe this course of action will be more productive and certainly less destructive of free speech.

Never before has a criminal sanction been attached to this kind of speech. The CIA insists that it is necessary, but it is the responsibility of Congress, as well as the courts, to determine whether such a measure is constitutional or whether a less onerous alternative will deal adequately with the problem.

In conclusion, I believe this bill is dangerous not only for what it forbids directly, but also, for the precedent it creates.

Today we ban the disclosure of identities. Tomorrow, there will be talk of banning disclosure of covert actions themselves. Why not? The logic is the same—the preservation of effective foreign intelligence efforts.

If the American people are denied information, they are denied the power that the Constitution says resides with them. Preventing that is what the first amendment is all about.

Ultimately, it is the respect and protection we afford free speech that distinguishes this country from the nations within which the CIA secretly

operates. If a free society is sacrificed for a better intelligence system, we have compromised our very goal.

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman for his statement. I understand the gentleman's position.

Mr. Chairman, I reserve the balance of my time.

Mr. McCLORY. Mr. Chairman, I yield 3 minutes to the gentleman from Florida (Mr. YOUNG), a member of the committee.

Mr. YOUNG of Florida. Mr. Chairman, I rise in support of H.R. 4.

I will even support it stronger if it includes the amendment to be offered by my distinguished colleague, the gentleman from Ohio (Mr. ASHBROOK).

I would like to just make a few points in support of this legislation. You know, when the Committee on Intelligence meets in open session which it does occasionally, more often than not, representatives of the Soviet Union are there in the room observing what it is we are doing and talking about. On the Appropriation Committees dealing with defense, the same thing happens. In the Armed Services Committee, the same thing happens.

The point is that the Soviet Union is able in open sessions to send its operatives into this Congress to get for nothing information that we make available to the general public. They not only cover the meetings, they come in to pick up copies of our publications usually without cost. They visit offices on Capitol Hill and they learn for nothing things about us that we have to spend millions of dollars to learn about them. We have to put people's lives at risk to learn about them and what their plans are for us and our future.

Our security is important and the information that we obtain through these intelligence operations are important to that security.

The point is, Mr. Chairman, that we have to have an effective intelligence operation and the protection of the identities of those people who perform that vital service is extremely important if we are going to succeed.

One of our allied nations sent representatives here about a year ago to meet with members of our committee to determine what we believe the future of our intelligence community to be. Are we going to protect our agents, are we going to protect secrets? Their concern was not so much about how does that affect the United States, but how does that affect them. If we let out too much information, if we allow agents to be exposed and to be exposed to this risk, what kind of a risk are we creating for them back in their own countries?

I say, Mr. Chairman, that it is important that we have the cooperation of our friendly nations and our allied nations, because they also have effective intelligence operations. This legislation is extremely important not only to the security or our Nation, but to guarantee the continued cooperation of our allied nations and the preservation of an effective intelligence community.

Mr. Chairman, I would like to close with this comment.

There are those of us who serve on the Select Committee on Intelligence who have different philosophical viewpoints from one end of the spectrum to the other; but I can say, Mr. Chairman, that every member of that committee approaches the responsibility and the security of our Nation in a very mature fashion, in a very responsible fashion.

Yes, we do have some disagreements at times, but the disagreements are not political. They are never personal. Those disagreements are what members honestly and truly believe to be in the best interests of the United States of America and the security of our Nation and the security of our people.

I am very proud to have the opportunity to work with people like the gentleman from Massachusetts (Mr. BOLAND), the gentleman from Kentucky (Mr. MAZZOLI), the gentleman from Virginia (Mr. ROBINSON) the ranking member on our side, and the gentleman from Illinois (Mr. MCCLORY), as well as every other member of our committee.

We bring to you a piece of legislation that I think deserves the unanimous support of this House of Representatives.

Mr. McCLORY. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. BROOMFIELD).

(Mr. BROOMFIELD asked and was given permission to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Chairman, I want to compliment the gentleman from Illinois (Mr. MCCLORY), the gentleman from Kentucky (Mr. MAZZOLI), for this excellent piece of legislation, along with the gentleman from Massachusetts (Mr. BOLAND) and the gentleman from Virginia (Mr. ROBINSON).

This legislation is long overdue. I think they have done a great job.

I certainly hope the Members will give it the strongest support, because we need this kind of legislation on the statute books.

Mr. Chairman, the primary purpose of this measure is to enhance the protection of U.S. intelligence operatives working under cover. Such legislation is of compelling urgency as there are individuals, including former U.S. intelligence officials, who are busily and systematically engaged in efforts to destroy our intelligence capability by disclosing the identities of those clandestinely employed by the various U.S. intelligence agencies.

An episode in Jamaica illustrates what I am talking about. In July of last year, the homes of our Embassy's First Secretary in Jamaica and an AID employee were fired upon shortly after the American editor of Covert Action Information Bulletin claimed in a press conference that these U.S. officials and 13 other Americans, as well as Jamaicans, were connected with the CIA. Not only were the names of these individuals disclosed, but also their home addresses, telephone numbers and auto license tag numbers. Fortunately, unlike the CIA station Chief in Athens who was killed in December 1975 after his cover was blown in a similar fashion by the magazine Counter Spy, the American officials and families involved in the Kingston attack survived unscathed. It was a close call, however, as two of the bullets penetrated the bedroom window of one of the children who was providentially away at the time.

With that as backdrop, it is little wonder that our human intelligence collection efforts are in serious jeopardy around the world. Self-preservation is a very basic instinct and why should anyone want to be associated with an intelligence community that cannot provide adequate protection for those it asks to undertake dangerous assignments of significant national security import?

In evaluating the merits of this legislation, I find former CIA Director William Colby especially persuasive when he, while participating in an American Enterprise Institute panel discussion of intelligence matters, observed that:

> The journalists believe they should protect their sources. I think our Nation should protect its sources. We need a discipline over our employees to make sure that, when they undertake to keep the secrets they are going to learn when they go to work for intelligence, they darn well keep them. If they violate that trust, they should be subject to criminal action. There are thirty-odd statutes in our criminal code that punish government officers for revealing information they learned during the course of their work—the Agricultural Department employee who reveals the crop statistics, for example, and a variety of others.
>
> Our national secrets and the officers who serve their country are entitled to that same protection from someone who reveals them. The soldier does not mind the enemy shooting at him, but he certainly does not want a fellow American shooting at him. The intelligence officer does not mind the threat and the danger from the enemy or the foreign country, but he cannot accept the possibility that some American can freely reveal his name and endanger him.

Finally, I would like to address briefly the first amendment questions of this bill that have been raised by some of my colleagues, especially with respect to criminalizing disclosures of undercover intelligence identities by individuals who have never been affiliated with the U.S. Government. Of special concern in this regard are journalists. This bill was drafted with great care and sensitivity to this issue and I believe has resolved it in a responsible and constitutionally acceptable manner. Such individuals can only be prosecuted under this legislation when it can be clearly demonstrated that the disclosure occured in the context of a practice of identifica-

tion and disclosures intended to impair U.S. intelligence capabilities.

This means that to be criminally culpable, one would have to be engaged in the business of naming names like the publishers of the aforementioned Covert Action Information Bulletin or Counter Spy. This approach makes eminently good sense and is consistent with the point made by Justice Oliver Wendell Holmes (in the famous Espionage Act decision of 1919) that—

The first amendment * * * obviously was not intended to give immunity for every possible use of language * * * the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic.

Also very relevant in this connection are the remarks of Zechariah Chafee, a leading defender of free speech during his 37 years at the Harvard Law School and the uncle of the distinguished Senator from Rhode Island who introduced the Senate version, S. 391, of this bill. In a book entitled "Free Speech in the United States," the elder Chafee wrote that:

The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth. Every reasonable attempt should be made to maintain both interests unimpaired, and the great interests in free speech should be sacrificed only when the interest in public safety is really imperiled, and not, as most men believe, when it is barely conceivable that it may be slightly affected. In war time, therefore, speech should be unrestricted by the censorship or by punishment, unless it is clearly liable to cause direct and dangerous interference with the conduct of the war. Thus, our problem of locating the boundary line of free speech is solved. It is fixed close to the point where words will give rise to unlawful acts.

In sum, Mr. Chairman, what we have before us is practical, commonsense legislation that addresses a problem of paramount national security importance while carefully insuring no genuine civil liberties are infringed upon. I, therefore, urge its immediate passage. It is the least we can do for those who literally put their lives on the line for us.

Mr. McCLORY. Mr. Chairman, I yield 3 minutes to the gentleman from Arizona (Mr. RUDD).

(Mr. RUDD asked and was given permission to revise and extend his remarks.)

Mr. RUDD. Mr. Chairman, I would like to express my deepest appreciation to Chairman MAZZOLI, to the ranking minority member, the gentleman from Illinois (Mr. MCCLORY), and to the chairman of the full committee, the gentleman from Massachusetts (Mr. BOLAND), and to the ranking minority member (Mr. ROBINSON) and to all the members of the committee for the efforts they have made in order to do this.

Mr. Chairman, I rise in support of this bill for which the clear purpose as stated by the committee is to prevent the disruption of legitimate, important intelligence operations, and to criminalize those disclosures which clearly represent the conscious and pernicious effort to eliminate the effectiveness of U.S. intelligence operations.

Despite great technological advancements in information gathering by our intelligence community, a very significant portion of information collection relies upon live informants.

This human intelligence effort is increasingly threatened by the deliberate disclosure of the identities of our undercover agents. Publication of the names of these agents not only extinguishes the effectiveness of these agents, but endangers their lives as well.

Recently we have witnessed the gruesome illustration of the urgent need for criminal penalty for this type of disclosure. The most infamous example was the identification in "Counter Spy"—published by former CIA employee, Phillip Agee—of Richard S. Welch as the station chief for the CIA in Athens, Greece. Shortly after this divulgence, Welch was assassinated. The most recent example, was the identification in 1980 by covert action information bulletin—another anti-intelligence publication initiated with Agee's assistance—of 15 CIA agents serving Marxist Jamaica. Again, the disclosure precipitated a machinegun attack on the home of the CIA station chief.

It is clear that without some legislative action to restrict these disclosures, agents will continue to be exposed to murder as a result of the actions of those bent on total elimination of the intelligence-gathering capacity of the U.S. Government.

Let there be no doubt that this is the aim of the propogators of such publications and supporting organizations. In 1978, a national conference was held by the campaign to stop government spying, where objectives were announced to continue worldwide publication of intelligence information, suits directed against government agencies and private companies whose security departments cooperate with law enforcement agencies and intelligence agencies and to make use of the Freedom of Information Act for forced disclosure of intelligence information.

Our Nation's intelligence operations enable us to provide countermeasures to protect our people, and are thus an integral part of our defense strategy. We must act decisively to protect our intelligence community from assault, and in this vein I am pleased with the swift action of the House Committee in reporting this legislation; H.R. 4 contains provisions which would not limit prosecution to those individuals having or having had direct or indirect access to classified information, but is carefully drawn to include anyone who deliberately exposes covert agents with the intent of destroying U.S. intelligence goals. This is a necessary component of effective legislation because it would clearly stipulate that the outright objective of exposing intelligence personnel is contrary to important national interests.

I have sponsored legislation which would also provide criminal penalties for anyone who falsely identifies an individual as an intelligence agent, and I support the inclusion of this provision. Enactment of such a measure would put a halt to the insidious efforts of anti-intelligence sources to dismantle U.S. information gathering with the threat of exposure. Further, I believe that injunctive relief should be included in the bill to give the Attorney General power to take action to stop imminent publication of such identification.

I applaud the committee on their efforts to deal sternly with those who would endanger the lives of those who serve in sensitive intelligence positions, and urge the House to adopt the measure.

Mr. McCLORY. Mr. Chairman, will the gentleman yield to me?

Mr. RUDD. I will be glad to yield.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding.

The gentleman as a former FBI agent, I am sure, will be interested in the fact that this legislation also covers FBI agents who operate under cover when they are engaged in counterintelligence activities. It will secure their protection, as well as our CIA agents or other intelligence agents who operate under cover overseas.

Mr. RUDD. I am sure that information is of great concern and gives a great deal of delight to all the people engaged in intelligence activities. I have sponsored legislation like this every year that I have been in Congress. It has been a little more direct with regard to penalties and punishment for violations of the law.

Again I want to applaud the committee in their efforts to deal strictly with those who would endanger the lives of those who serve in sensitive intelligence positions on behalf of the security of our Nation.

Mr. Chairman, I urge the House to adopt the measure.

Mr. MAZZOLI. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. WEISS).

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. Mr. Chairman, I want to thank the gentleman for yielding.

I understand the very difficult job that the committee had to assume. They have seen something that is very reprehensible and attempted to find an answer. Unfortunately because the problem they are trying to correct is so reprehensible, they have overstepped constitutional bounds.

The gentleman from Ohio says that section 601(c) is the work product of the ACLU. I want to say as one who

usually supports ACLU positions, whether it is their work product, or not, I oppose it.

The committee language allows an incursion on first amendment rights in section 601(c) which for the first time in our history would have private citizens prosecuted for disclosing information already in the public domain. That is such a horrendous step toward violating the first amendment, that no matter who thought of it, whether it is the ACLU or the committee or anyone else, we ought not to have any part of it. I think if that section were to be adopted, what happened at Watergate where the information of prior CIA identification of some of the burglars was disclosed could probably be prosecuted. If section 601(c) is adopted, you would have members of the clergy who discovered that people within their denomination were CIA agents prosecuted if they disclosed it, even if they discovered it quite on their own because it was a matter of public information.

I think the thing to do is not to make this section even worse. The thing to do is to strike it.

I think that the gentleman from Ohio gives the ACLU much more credit than it deserves. Given what Mr. Meese has had to say about the ACLU, to suggest that the ACLU can walk into the CIA headquarters and get them to agree to language which should be adopted by the House of Representatives goes beyond the realm of reasonable imagination.

I thank the gentleman for yielding to me.

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Mr. MAZZOLI. I thank the gentleman for that statement.

Mr. McCLORY. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. WORTLEY).

Mr. WORTLEY. Mr. Chairman, I rise in support of H.R. 4 the Intelligence Identities Protection Act. I strongly support enactment of legislation to provide criminal penalties for the unauthorized disclosure of the identities of those who engage or assist in the foreign intelligence activities of this country. This Nation's intelligence apparatus is our firstline defense. The national security of the United States depends upon the strength and vitality of that apparatus. This strength and vitality is being sapped. The very lives of the individuals involved in these activities on behalf of the United States may be in jeopardy as a result of the unauthorized disclosure of the identities of our intelligence officers, agents, and sources. Legislation of this type is critically important to deter and punish those who make it their business to make such unauthorized disclosures.

This legislation is long overdue. Extensive hearings before the House and Senate Intelligence and Judiciary Committees have documented the damage these unauthorized disclosures have had on our human source intelligence collection capabilities. Director William J. Casey, of Central Intelligence, in testimony before the Senate Judiciary Subcommittee on Security and Terrorism in May testified that—

These unauthorized disclosures have resulted in untold damage, and, if not stopped, will result in further damage to the effectiveness of our intelligence apparatus, and hence the nation itself.

This body's own Permanent Select Committee on Intelligence in its report on H.R. 4 attests to the utter uselessness of these disclosures:

The unauthorized disclosure of the names of undercover intelligence agents is a pernicious act that serves no useful informing function whatsoever. It does not alert us to abuses; it does not further civil liberties; it does not enlighten public debate; and it does not contribute one iota to the goal of an educated and informed electorate.

The only purpose it serves is to disrupt our legitimate intelligence collection programs. Effectively, such a result benefits no one but our adversaries.

Mr. Chairman, as a newspaper publisher and editor, I bring a special perspective to this debate. Opponents of this legislation have been heard to say that its enactment will have a chilling effect on first amendment rights. In my opinion, neither the House nor the Senate version of this legislation constitutes an assault upon the first amendment. Indeed, the U.S. Supreme Court in Haig against Agee found the conduct proscribed by this legislation to be "clearly not protected by the Constitution." The Intelligence Identities Protection Act would not inhibit public discussion and debate about U.S. foreign policy or intelligence activities, and would not operate to prevent the exposure of illegal activities or abuses of authority. Disclosures of intelligence identities by persons who have not had authorized access to such information would be punishable only under specified conditions, which have been carefully crafted and narrowly drawn. The act does not apply to anyone not engaged in an effort or a pattern of activities designed to ferret out and expose intelligence personnel. It is instructive to look at all of the elements of proof required in a prosecution under subsection 601(c). The Government would have to prove each of these elements beyond a reasonable doubt.

Mr. Chairman, consideration of the carefully and narrowly drawn prohibition in the Intelligence Identities Protection Act, in light of the clear and present danger to our Nation's intelligence capabilities resulting from unauthorized disclosures of intelligence identities, leads inescapably to one conclusion. The legislation we are considering fulfills the urgent need to increase our efforts to guard against damage to our crucial intelligence sources and methods of collection, without impairing civil and constitutional rights.

Mr. Chairman, I urge passage of this much needed legislation.

Mr. McCLORY. Mr. Chairman, I yield 2½ minutes to the gentleman from Virginia (Mr. WHITEHURST), a member of the committee.

Mr. WHITEHURST. Mr. Chairman, I rise in support of the Intelligence Identities Protection Act, H.R. 4.

Mr. Chairman, each and every day of the year some of the true patriots of our country are at work, clandestinely, throughout the world uncovering information necessary to keep our leaders informed of important world events—before they happen. They must toil under extremely difficult conditions to produce in an extremely difficult job. And, they do so often at risk to their safety—indeed, their lives.

Unfortunately, there are a group of miscreants who have taken it upon themselves to greatly increase these risks by exposing the identities of our covert intelligence agents.

Mr. Chairman, what is needed is legislation designed to act with the precision of a highly skilled surgeon—to cut out the malignant cells of Phillip Agee and others of his ilk while leaving untouched the healthy activities of the fourth estate. The bill reported by the Intelligence Committee is up to the task and that is why I have chosen to support it.

H.R. 4 is a good piece of legislation born of extensive committee hearings, deliberations, and consultations with the CIA and Department of Justice. Both of these agencies believe H.R. 4 to be an effective measure.

H.R. 4 would make it a crime to engage in an ongoing effort intended to impair U.S. intelligence activities and to further that effort by disclosing the identities of covert agents—nothing more; nothing less.

This bill would in no way inhibit free debate over the policies underlying our foreign intelligence activities, or over the activities themselves. H.R. 4 would not impose sanctions against those who criticize the CIA, no matter how unwisely. H.R. 4 simply is designed to protect our covert intelligence agents from having their identities publicly brandished by those who seek to destroy the security of our country.

A delicate balance has been struck in this legislation, through long and painstaking effort.

Mr. Chairman, the reservation of constitutional guarantees has been honored as we strove to reduce the vulnerability of the lives of our intelligence officers, agents, and informers whose work is essential to the national security.

Mr. Chairman, for these reasons I urge support for H.R. 4.

Mr. McCLORY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I think the debate on this measure has been very illuminat-

ing. I am confident that there is overwhelming support for the legislation. I hope that the discussion of the provisions of 601(c) will not distract us from the intent of the committee or from the intent of all who are supporting this measure.

I disagree with the amendment that will be offered by my colleague, the gentleman from Ohio (Mr. ASHBROOK). I think employing the word "intent" is better, though the expression "reason to believe" is a valid one. I think "reason to believe" relates more to the subject of negligence than it does to a criminal offense. I think that in a criminal statute such as we have here that we should use the expression "intent."

As far as the persons covered by this, I think that all persons should be covered. However, we are putting forth this legislation primarily to get at those who make a business of disclosing the names and the identities of covert agents and who capitalize on that and profit from it. And we certainly want to end that promptly.

Now, I do not think we should exempt any particular category. Reference has been made to the clergy. I have a great respect for the clergy and other professions and activities. But to exempt any particular individual merely because of the activity in which he or she happens to be engaged I think would be a distortion of our whole concept of criminal law.

I hope that we can keep our eye on the objective of this legislation and pass it promptly and send it to the President.

Mr. MAZZOLI. Mr. Chairman, I yield myself the remainder of my time.

I would just sum up by saying I endorse everything that was just said by the gentleman from Illinois. I believe that the House would do a good service for the country and for the intelligence community were it to vote out the bill exactly as it is before us today without any changing amendments.

I have a lot of sympathy for the amendments that will be offered. We debated them carefully in the committee, as the gentleman from Florida (Mr. YOUNG) said. These are offered by serious individuals who have the best interests of their Nation at heart, as they view it. On a given day, under a given set of circumstances, many of these could be supportable. But we have before us a bill which has the input of all sides of the philosophical spectrum and political spectrum. It does indisputably help the CIA and the other intelligence communities solve a very vexing problem, and that is, how do you deal with publications who name names and, therefore, blow identities and destroy effectiveness of our agents.

While the gentleman from Ohio (Mr. ASHBROOK) might argue at some point that the CIA prefers other language, it is indisputable that they say this language, which is before the House today, will do the job that they know has to be done. They have, and their colleagues in the intelligence community have, fought the good fight and have been more patient than they needed to be these years, waiting for some solace, and waiting for some relief, and this is the relief before us.

They do want this bill, they do want this kind of relief. I think we can speed it to them and speed it to the Nation if the House votes up this bill as we see it before us today.

Mr. BOLAND. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Massachusetts.

Mr. BOLAND. Mr. Chairman, I want to commend the gentleman from Kentucky and the gentleman from Illinois for their summation.

I have just a couple of points before we get into the amendment stage.

As has been said here, this bill is a consensus reached not alone by members of this committee, not alone by members of the Judiciary Committee, but by the intelligence community, by the CIA, and also by some distinguished constitutional scholars whose opinion is that this particular bill, H.R. 4, would pass constitutional muster. There is a serious question among constitutional scholars as to whether or not S. 391, the Senate bill, with the standard of reason to believe, would pass that muster.

Therefore, I would hope that the entire membership of the House, those whose staffs are following this debate on television, would carry the message to their Members that this particular bill, H.R. 4, is the bill that has reached a consensus.

I am not sure that it is agreed to by the ACLU. I think probably TED WEISS knows more about that than I would, and his indication is that he does not believe the ACLU backs this bill. I am not sure it does itself.

Mr. WEISS. If the gentleman will yield, I did not say that. I said the ACLU probably feels that if this does not happen, something worse will. I am speaking for myself, saying it is too bad they have accepted it.

Mr. BOLAND. I accept the correction. I think the ACLU would prefer this to S. 391. I am sure Morton Halperin would prefer H.R. 4 to S. 391, the Senate bill.

But the fact of the matter is that some of the distinguished constitutional scholars, such as Philip Kurland of the University of Chicago Law School, who specifically states that without this kind of specific intent standard, which is built into H.R. 4, the bill would be unconstitutional.

Therefore, my plea to the membership of this House is that they back this bill as we have reported it. It is backed by the intelligence community. The CIA backs H.R. 4. Sure, it prefers S. 391, and I guess the Attorney General of the United States prefers S. 391, because it would be easier to prosecute under S. 391, and that is the constitutional objection.

Mr. Chairman, I would hope that the membership would follow the leadership of the gentleman from Kentucky (Mr. MAZZOLI) and the gentleman from Illinois (Mr. MCCLORY), who spent so much time on this bill, and defeat all the amendments that were offered to H.R. 4, and we can get along with a bill which, when challenged in the courts, will be held constitutional.

Mr. HYDE. Mr. Chairman, I am pleased to rise in vigorous support of H.R. 4, the Intelligence Identities Protection Act.

The Committee on the Judiciary, of which I am a member, considered the predecessor of H.R. 4 last year, following a sequential referral from the Intelligence Committee, and favorably reported that bill by a stunning majority. I would like to commend the members of the Intelligence Committee for their hard work and thoughtful effort in connection with this bill in the last Congress and in this one. After careful consideration, I am convinced that a compelling need has been shown for legislation of this nature and I believe that it is constitutional.

What is the compelling need—the clear and present danger—which this bill is intended to meet, Mr. Chairman? As my colleagues from the Intelligence Committee have described so eloquently, the dangers arising out of these disclosures include demoralization within our intelligence agencies, discouragement of potential sources of information, and impairment of our national defense and foreign policy efforts. We must be willing to protect our agents and their families with the most effective methods available to us under the Constitution and I am firmly committed to that endeavor.

Mr. Chairman, the first amendment is not absolute—for any of us. No special exception is made for children who want to pray in public schools or for Members of Congress who want to give golden fleece awards. However, the danger that the bill addresses must be distinctly identified and compelling, and the means to combat it must be narrowly drawn and necessary. These tests are best illustrated by Justice Holmes' famous observation that no one has the right to yell "fire" in a crowded theater. By the same token, Mr. Chairman, no one has the right to risk the lives of our agents

and our national security by disclosing the names of covert agents.

Mr. Chairman, after 2 years of work by Members on both sides of the aisle, this bill is so finely tuned and narrowly drawn that the Government's burden of proof is substantial, as it should be. If the defendant has not had authorized access to classified information, it must prove, beyond a reasonable doubt, not only that the defendant had a special state of mind, but that the disclosure was made in the course of an effort to identify and expose covert agents. No prosecutions for conspiracy, aiding and abetting, or misprison of a felony are authorized unless the disclosure was part of an effort. The Government's public disclosure of the covert relationship is a defense. Finally, the bill provides an avenue for whistle blowers by exempting from prosecution communications to congressional intelligence committees.

Is this the least restrictive means that we can use, Mr. Chairman, to get at the evil we have identified? I believe that it is. Our concern is with protecting the identities of our agents—the discloser's employment circumstances are irrelevant. The damage done is the same, whether the defendant had authorized access to classified information, or not. There is, and, or course, there ought to be, ample room for free and robust public debate on our intelligence policies without injecting the names of our covert agents into that debate. This minimal limitation on free speech and press is indeed proper when compared to the overriding and fundamental national interest to be served—providing for the common defense.

Mr. Chairman, if any of my colleagues have lingering doubts about the constitutionality of this bill, I commend to their attention the recent Supreme Court case of Haig against Agee. The respondent in that case was a notorious discloser of agent's names, a fact which the court repeatedly emphasized in its opinion. In rejecting the argument that the first amendment prevented the Secretary of State from revoking his passport for these activities, which created a serious danger to our national security, the Court observed:

> These disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that the respondent is also engaged in criticism of the Government does not render his conduct beyond the reach of the law.

Mr. Chairman, an enlightened editorial, which appeared last year in the Washington Star, one of the few newspapers able to see beyond its own narrow self-interest on this issue, suggested that:

> Congress should do whatever is necessary, taking due but not paralyzing heed of constitutional scruples to protect our covert * * * agents. Otherwise it would be well to admit that we are too paralyzed by constitutional scruples to conduct an effective foreign intelligence system in this dangerous world, and stop asking our people to risk their lives in its service. We cannot have it both ways.

Mr. Chairman, we cannot have it both ways. I reject the absolutist approach to the first amendment which has been advanced during the debate on this type of legislation as a threat to our national security, and ultimately, to all of our precious liberties. Last year, we heard suggestions that an effort to pass this legislation was merely a hysterical reaction to attacks upon our agents in Jamaica. Mr. Chairman, let me emphasize to these critics, 1 year later, that this is not an emotional reaction. It is a firm commitment which some of us have made to protecting the brave men and women who serve us so well.

I urge my colleagues to lend their support to prompt passage of H.R. 4.

● Mr. FIELDS. Mr. Chairman, as a cosponsor of the Intelligence Agents Identity Act of 1981, I support the passage of H.R. 4 as a means to strengthen our national intelligence capability.

A crucial element of an effective national security policy is the ability to collect and analyze high-quality intelligence information. The need for a sophisticated covert intelligence infrastructure becomes more critical as U.S. interests abroad expand. Notwithstanding the variety of technical components used by the intelligence community, there remains a need to employ traditional human resources. Without the human element contributing to the intelligence system, the United States would not have the proper insight into the plans of foreign governments it confronts or international problems it must face. As the United States seeks to improve its national security strategy, a network of clandestine operators to carry out covert activities in important situations is a fundamental prerequisite. Further, the identities of these individuals must be protected for their personal safety and to insure the credibility of the entire operation.

Intelligence agents are faced with the constant consequences of exposure. Because espionage is a criminal activity in many countries, our agents must face the threat of expulsion or imprisonment. Their safety is further threatened by terrorist actions directed against them.

Last year, on the Fourth of July, terrorists opened fire on the home of Richard Kinsman, a U.S. Embassy employee living in Kingston, Jamaica. Bullets ripped through the bedroom window of Kinsman's daughter. Fortunately, no one was injured.

This attack came within 24 hours of an announcement by Louis Wolfe of the Covert Action Information Bulletin. Wolfe had just disclosed the names of 15 people he claimed to be CIA agents. In addition, he revealed their addresses, phone numbers, license plate numbers and the type of car they owned.

Yet not all who are victims of ignoble crusaders such as Louis Wolfe are as fortunate to survive. Richard Welch, an attaché at the American Embassy in Athens, was gunned down in 1975 while returning from a Christmas party. This murder followed an article in the Athens News tagging Welch as a CIA station chief. The information in the News story had earlier been printed in Counterspy magazine, published by ex-CIA employee Phillip Agee.

Like Wolfe, Agee has no qualms about revealing the identities of covert U.S. agents. For Agee, these disclosures play a necessary role in his ongoing struggle for socialism in the United States.

U.S. intelligence officers are leading the fight against terrorism on the international front. To arbitrarily disclose the identities of these individuals serves to render American credibility abroad worthless. These unauthorized exposures result in a variety of consequences including a loss of expertise in the intelligence field, erosion of morale for the families of these officers, and a general deterioration in the quality of U.S. foreign policy.

We as a nation can no longer tolerate this breach in national security. Our responsibility is to the men and women whose lives are jeopardized daily in their struggle to protect freedom and democracy in the United States. Regardless of the motivating forces behind men like Phillip Agee, the end result is a disruption in the legitimate intelligence-gathering program. No longer should these agents be subjected to additional threats of violence stemming from arbitrary disclosures. The very nature of their profession mandates a life of adversity and perilous hazards. Individuals who have served their country in this dangerous and frequently fatal capacity should be sheltered from the misguided efforts of these ignoble crusaders.

Toward this end, I urge the adoption of H.R. 4, which will criminalize the disclosures of intelligence identities. We must now take firm action to protect not only the integrity of these agents but also to protect our national security from further treasonous disclosures.●

● Mr. DERWINSKI. Mr. Chairman, I support this legislation. We have delayed far too long in providing a law, first drafted almost 6 years ago, to protect American citizens abroad from attack and possible murder. I am referring, of course, to American intelli-

gence employees and agents—and their families—who, it has been amply demonstrated, quickly become the targets of terrorists when they are openly identified by their fellow citizens. No one in my opinion has the right to mark a fellow citizen for murder.

It is claimed that part of this bill may be unconstitutional. I do not think so. In the first place, it is not the compilation of previously published information which would be outlawed by this legislation, it is the publicized conclusion that such data demonstrates an intelligence connection. As a matter of fact, the bill would not make it a crime to reveal information previously published by the U.S. Government and, in any case, the law would require that research by itself would not be sufficient to convict.

This publicized conclusion, it should be remembered, could subject the person so identified, accurately or falsely, to physical attack and could, at least, negate the work he was sent abroad by his Government to do. This is the activity that this bill would criminalize and only if there were intent to "impede or impair" the intelligence effort of the United States. No right is absolute if lives are endangered. This principle has been recognized by the courts.

Even before the attack on the home of the CIA chief of station in Kingston, Jamaica, on July 4, 1980, Cord Meyer, a former intelligence officer himself, wrote of some of the dangers inherent in the unchecked open identification of our intelligence employees. In a newspaper column dated June 7, 1980, Meyer described one of the unfortunate results of the public exposure of American intelligence personnel by the Covert Action Information Bulletin:

(T)his ongoing exposure of CIA officials involves a massive hemorrhage that is far more damaging than the potential leakage of operational details from an excessive number of congressional committees. The assassination of the CIA station chief in Greece, Richard Welch, in 1975, shows how tragic can be the consequences of the fingering of CIA officials abroad . . .

But even if more assassinations do not result from the continuing exposures that the Bulletin plans to make in subsequent issues, the damage done to the careers and usefulness of those identified is irreparable.

Meyer pointed out:

For their own protection they can no longer serve in many corners of the world where terrorists flourish and many governments will no longer accept them as members of American diplomatic missions once they have been so openly identified.

The author stated, correctly, I believe—

The real loser is the American public whose security will steadily be eroded by the loss of so much carefully trained talent from the front lines of the long struggle with the KGB and its allies.

Meyer concluded:

No other democratic country attempts to conduct intelligence abroad with so little protection for its career officers.

This legislation is something many of us here have favored since the mid-1970's after Richard Welch, CIA chief of station, was murdered in Athens, Greece. Meyer, in his column cited above, had this to say:

Let us hope that we don't have to wait for a replay of the Welch assassination to shock the Congress and the administration into making the legal and procedural reforms that seem so obviously necessary.

This was written before the Kingston attack where, fortunately, no one was killed. That assault, nonetheless, serves as a reminder of something which has seemed "so obviously necessary" for so long to so many of us. The Congress should do the right thing now and pass this bill.●

● Mr. MICHEL. Mr. Chairman, the tragic murder of CIA agent Richard Welch in Athens in 1976 focused our attention on the jeopardy that such individuals are placed in through public identification.

Thus, in 1976 and again in 1977, I introduced legislation to provide for the personal safety of those persons engaged in furthering the foreign intelligence operations of the United States.

In introducing such legislation during the 95th Congress, I said that the problem was most urgent and that we had to take positive actions to protect the lives of our agents.

I feel as strongly about this matter now as I did then.

Our intelligence agents have become the actual or potential victims of what might be called literary hit men who use a book or a magazine article to do their dirty work. It could just as easily be an assassins bullet, because the results are tragic.

These literary hit men have put the lives of American intelligence officials in jeopardy. Agent Welch died because of such an exercise in irresponsibility.

I just want to say that I am glad we have this chance to protect those whose work means so much to our national security.●

The CHAIRMAN. All time for general debate has expired. Pursuant to the rule, the Clerk will now read the substitute committee amendment recommended by the Permanent Select Committee on Intelligence now printed in the reported bill as an original bill for the purposes of amendment. No amendments are in order except germane amendments printed in the CONGRESSIONAL RECORD on or before September 22, 1981.

The Clerk read as follows:

H.R. 4

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Identities Protection Act".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"DISCLOSURE OF IDENTITIES OF CERTAIN UNITED STATES UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

"SEC. 601. (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

"(b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

"(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification or exposure, discloses, to any individual not authorized to receive classified information, any information that identifies a covert agent knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both.

"DEFENSES AND EXCEPTIONS

"SEC. 602. (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

"(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

"(2) Paragraph (1) shall not apply (A) in the case of a person who acted in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, or (B) in the case of a person who has authorized access to classified information.

"(c) It shall not be an offense under section 601 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.

"PROCEDURES FOR ESTABLISHING COVER FOR INTELLIGENCE OFFICERS AND EMPLOYEES

SEC. 603. (a) The President shall establish procedures to ensure that any individual who is an officer or employee of an intelligence agency, or a member of the Armed Forces assigned to duty with an intelligence agency, whose identity as such an officer, employee, or member is classified information and which the United States takes affirmative measures to conceal is afforded all appropriate assistance to ensure that the identity of such individual as such an officer, employee, or member is effectively concealed. Such procedures shall provide that any department or agency designated by the President for the purposes of this section shall provide such assistance as may be determined by the President to be necessary in order to establish and effectively maintain the secrecy of the identity of such individual as such an officer, employee, or member.

"(b) Procedures established by the President pursuant to subsection (a) shall be exempt from any requirement for publication or disclosure.

"EXTRATERRITORIAL JURISDICTION

"SEC. 604. There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

PROVIDING INFORMATION TO CONGRESS

"SEC. 605. Nothing in this title shall be construed as authority to withhold information from Congress or from a committee of either House of Congress.

"DEFINITIONS

"SEC. 606. For the purposes of this title:

"(1) The term 'classified information' means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

"(2) The term 'authorized', when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department of agency engaged in foreign intelligence or counterintelligence activities, order of a United States court, or provisions of any Rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

"(3) The term 'disclose' means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

"(4) The term 'covert agent' means—

"(A) an officer or employee of an intelligence agency, or a member of the Armed Forces assigned to duty with an intelligence agency—

"(i) whose identity as such an officer, employee, or member is classified information, and

"(ii) who is serving outside the United States or has within the last five years served outside the United States;

"(B) a United States citizen whose intelligence relationship to the United States is classified information and—

"(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

"(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

"(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

"(5) The term 'intelligence agency' means the Central Intelligence Agency, the foreign intelligence components of the Department of Defense, or the foreign counterintelligence or foreign counterterrorist components of the Federal Bureau of Investigation.

"(6) The term 'informant' means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

"(7) The terms 'officer' and 'employee' have the meanings given such terms by sections 2104 and 2105, respectively, of title 5, United States Code.

"(8) The term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

"(9) The term "United States', when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.".

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"Sec. 601. Disclosure of identities of certain United States undercover intelligence officers, agents, informants, and sources.
"Sec. 602. Defenses and exceptions.
"Sec. 603. Procedures for establishing cover for intelligence officers and employees.
"Sec. 604. Extraterritorial jurisdiction.
"Sec. 605. Providing information to Congress.
"Sec. 606. Definitions.".

Mr. MAZZOLI (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment which has been printed in the RECORD in accordance with the rule.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 3, strike out lines 11 through 21 and insert in lieu thereof the following:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both."

Mr. ASHBROOK. Mr. Chairman, I rise in strong support of this amendment.

But before I present the arguments for this amendment, let me comment on the statement of our very fine chairman, the very distinguished gentleman from Massachusetts (Mr. BOLAND). If there were any doubt where the ACLU stands, I would be glad to share with him their draft memo on our bill and Senate 391. As a matter of fact, I am inclined to think Mr. Berman and Mr. Halperin could almost serve on the Rules Committee. They have it all figured out. They go through the whole scenarios.

There game plan scenarios states "When the Senate Judiciary Committee considers the Legislation on September 15, a motion will be made to substitute the House language." Think of that. Their impertinence in trying to coordinate the legislative process. They know exactly what they are doing. They have it all on course—A, B, C, D, and E. I guess this is part E of A, B, C, D, and E of their legislative scenario. They have known what they have been doing all along.

The only addition I would make under revisions as to his remarks—maybe our chairman would like to add that language—he said this bill reflects the input of many people. But what the gentleman forgot to mention is that it also has the input of the people who are against not only this bill but would scuttle our intelligence activities. It reflects their input, too. And that is precisely what we are trying to throw out by the passage of my amendment.

My amendment is favored by President Reagan. My amendment is favored by the CIA. My amendment is favored by the Justice Department. I make those categorical statements that cannot be rebutted.

Sure, they will accept, can live with, and will work for the language in H.R. 4 as amended. But they prefer and favor the language of the Senate bill and my amendment. That is the crucial point.

□ 1200

The amendment that was just read substitutes the exact Senate language of S. 391 for the compromise language of the House Intelligence Committee report. During the hearings of the House Permanent Select Committee on Intelligence on April 7 of this year, Richard Willard, counsel for the Attorney General—counsel for Intelligence policy, I might add—speaking on behalf of the Justice Department said that both House and Senate versions of the bill—"would pass muster in terms of both due process and first amendment constitutionality."

Now the hearing of whether or not the Senate language and the language I have in this amendment would pass constitutional muster has been drawn across this body time and time again, but the Attorney General believes it is constitutional. Let me point out something most interesting. For those of you on the other side, the Carter Justice Department thought it was constitutional. The former administration on the record before our committee of saying that the language of my amendment and S. 391 is constitutional and, however, they preferred it. So, I am not springing something on you out of the well of this House.

Last year, in the House Intelligence Committee bill, the language that I am now offering as a substitute was supported by your President, your administration, your Attorney General. Ask yourselves, what has changed in the meantime? Certainly we do not have a more liberal President in the White House. That is not what has happened. What has happened is exactly what I said; as a part of passing this bill we allowed outside groups to have too much input. I am very unhappy at my own CIA Director, Mr. Casey. Why in the world he let those two men even come to Langley to talk over compromise language with the attorneys at the CIA—I look upon that as darn near a security breach. Why in the world they made those concessions I will never know.

Let us be honest about it; the Carter administration, the Reagan administration, the CIA, the President, everyone, the former agents, everyone who knows anything about this prefers the Senate language and the language of this amendment. I say that without contradiction.

Mr. Willard went on to support the Senate language rather than H.R. 4.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I will be glad to yield.

Mr. McCLORY. I thank the gentleman for yielding. I would not want to concur in the gentleman's statement——

Mr. ASHBROOK. I understand that.

Mr. McCLORY. As I understand it, the only communication I have seen from the White House is a letter——

Mr. ASHBROOK. Signed by the President.

Mr. McCLORY. Directed to a Member of the Senate in which they expressed support for the Senate language.

Mr. ASHBROOK. Right.

Mr. McCLORY. And without amendment. But, there was no comparison. I will say quite forthrightly to the gentleman that I have conferred by telephone both with the White House and with the Deputy Attorney General, and I find no expression there with regard to preference for the Senate language over our language. As a matter of fact, they are in support of our legislation and our language, and whatever is resolved in the conference I think they are going to be satisfied with. They are anxious for prompt enactment of the legislation.

I thank the gentleman for yielding.

Mr. ASHBROOK. My colleague is absolutely right, and his last statement that they do want prompt enactment of this language, but he has got the letter signed by the President of the United States in front of him. How can he stand before this body and say that he does not? It is right over there, and I assume the gentleman has it.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

(By unanimous consent, Mr. ASHBROOK was allowed to proceed for 3 additional minutes.)

Mr. ASHBROOK. The language is very clear. The President says he prefers Senate 391. Is there any doubt? He signed the letter. It is from the White House. The Attorney General is on record as favoring the same thing.

Mr. McCLORY. If the gentleman will yield further, I do not think the letter that I have seen says that he prefers S. 391 over H.R. 4. What he says is, he prefers S. 391 without amendment over some other variation, but it is not a variation which might be in the House bill.

Mr. ASHBROOK. My friend has been around here. He knows exactly what they are talking about is the language of this amendment. The testimony which I will go on to read, the testimony all talks about this language. We know that. Let us not engage in games. The Senate version is preferred again by President Reagan on the basis of the letter he signed, the CIA on the basis of their statement, the Justice Department on the basis of their statement. My colleague is not going to try and dilute that. They will accept what he is talking about, but they prefer this language.

Mr. McCLORY. If the gentleman will yield further, I do question that, and I do question the Senate language. Frankly, from my study of it—and I made an extensive study of it—I think the House language is preferable, and I tried to find some deficiency in it, or some loophole. I have not found one, for there is not one there.

Mr. ASHBROOK. Let me recapture my time, and I will show the gentleman the first deficiency. Mr. Willard, in supporting the Senate language said:

> The specific intent requirement can serve to confuse the issues in an actual prosecution to the point where the Government could be unable to establish the requisite intent beyond a reasonable doubt.

I would say that is about as specific objection to the language that the gentleman is now wrapping himself around as anyone could make. The specific intent requirement can serve to confuse the issues in an actual prosecution.

That by the chief officer who is going to make the prosecution under either H.R. 4 or S. 391, or a compromise version of both. What could be more specific than the chief law enforcement officer of the United States saying the gentleman's language could confuse the issues in an actual prosecution to the point where the Government could be unable to prove the requisite intent? I agree with him 100 percent, and that is why I support this language.

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I think it would be helpful to all of us to have this letter from the President, at least one paragraph, read so that we all know what it is. In this letter dated September 14, 1981——

Mr. ASHBROOK. Fairly recent.

Mr. YOUNG of Florida. President Reagan signed, it says in the third paragraph:

> Attorney General Smith advises that the Senate version of this legislation, S. 391, is legally sound, both from a prosecution perspective and in the protection it provides for constitutional rights of innocent Americans. Any change to the Senate version would have the effect of altering this carefully crafted balance.

Mr. ASHBROOK. And we are also talking about a change in H.R. 4. We are talking about a change, let me repeat, from what the Carter administrtion wanted, what the Carter Attorney General wanted, what the CIA wants, what the Attorney General of

the United States now wants, and what the President of the United States wants.

On that I rest my case, and I yield back the balance of my time.

Mr. MAZZOLI. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first let me emphasize to the Members of the Congress who are here in the House today, and those who are monitoring activities, that the amendment we will vote on at some point, that has been offered by the gentleman from Ohio, is a very important amendment. It may well determine the general tenor of the rest of the day toward this bill, so I would hope that they would monitor this particular part with some care.

Let me suggest a few things. One is that I do oppose the gentleman's amendment. I am sure it is offered, as all of his amendments are, in good faith, and backed up by significant study, but it was considered by our committee. We were aware of the existence of the Senate bill with its different standard, a negligence standard—"reason to believe" that something might result in injury to United States intelligence activities. But, having full knowledge of that, the committee, I believe with just one nay, voted in favor of the bill before the House today.

The gentleman from Ohio suggests that various administrations, including the last one, supported the Senate version. I would like to quote the former General Counsel of the Central Intelligence Agency, who, in connection with the hearings we had, said:

> It is from my point of view as a lawyer clear to me that without a specific intent element—

I might parenthetically say that specific intent element is in the bill before us today. He goes on—

> That without a specific intent element, statute that applied to someone who dealt only with unclassified information and phenomena would have serious constitutional problems. But this bill which your committee has very carefully drawn avoids those problems.

Mr. Silver was referring to the H.R. 4 of the last Congress, which had a double intent standard, so I would think this statement of his referring to today's version would certainly apply.

Mr. ASHBROOK. Mr. Chairman, will my colleague yield?

Mr. MAZZOLI. I will be happy to yield.

Mr. ASHBROOK. Is it not historically correct to say that we had a unanimous report of the entire House Select Committee on Intelligence on H.R. 5615 last year?

Mr. MAZZOLI. Yes.

Mr. ASHBROOK. And the language that was in H.R. 5615 in 1980, which we unanimously supported, is the language which we had before these amendments were offered, and changed H.R. 4. Is that not correct?

Mr. MAZZOLI. It is, and I would also suggest to the gentleman it has a specific intent standard which the gentleman himself supported last year, and I think the evidence was very clear that it, and H.R. 4 today, would solve the problem that was confronting the Intelligence Agencies; that is, their inability through the Department of Justice, to sanction those who in their own misguided way want to "name names." The specific intent standard does solve that problem. The gentleman supported it last year. He, I am sure in good faith, cannot support it this year.

Mr. ASHBROOK. Is it not the adding of the phrase, "by the fact of such identification," that changed the language of H.R. 4?

Mr. MAZZOLI. Well, I would answer the gentleman, it does not change the question of specific intent. We still have to prove in the bill before the House today, H.R. 4, an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States. We have simply added "by the fact of such identification and exposure."

Mr. ASHBROOK. Will the gentleman yield further?

Mr. MAZZOLI. Certainly.

Mr. ASHBROOK. In listening to what my colleague said, maybe we are in agreement. Maybe he agrees that the words, "by the fact of such identification," do not necessarily belong in H.R. 4, and we can get along without it.

Mr. MAZZOLI. I did not say that. I suggested it does not alter the specific intent. I thank the gentleman for his comments.

Before yielding to our chairman, I would also further quote from a former General Counsel of the Central Intelligence Agency from this year, where he referred to an earlier version of the bill. The same gentleman, who was at that time still General Counsel, said on September 20 of this year:

> I have personally a great deal of optimism that a prosecution could be carried forward successfully under either version of the bill.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 5 additional minutes.)

Mr. BOLAND. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Massachusetts.

Mr. BOLAND. Mr. Chairman, let me emphasize again that I would hope the Members of the House, those who are present here and those who are monitoring this on television, would keep their eyes on the ball. The bottom line is with respect to H.R. 4, that this is a bill which was reached after a consensus with a number of Members and committees on the House side, and also with the Intelligence community and with the people downtown.

As the gentleman from Ohio states, the Senate bill, S. 391, may be preferred by some to H.R. 4. We understand that. But, the problem I think that we have before us is whether or not we are going to get a bill which is going to pass constitutional muster. As the gentleman from Ohio has said—and he says it correctly—indeed last year H.R. 5615, that bill was not going to be taken up by the Senate. So, we had no opportunity at all to get any bill by last year.

I am sure that if we were in the same position this year, we would have the same difficulty, but we are not in the same position because we have reached a consensus here, a consensus which clearly indicates to all of us who support this bill—and we have spent, as the gentleman from Ohio knows, 2½ years on it, as has the Senate—I would think the constitutional lawyers on our committee have a right to their own opinion on whether or not our bill can stand constitutional muster better than the Senate version. That was the opinion of the members of our committee.

Again let me state that we had no opportunity to pass a bill last year because the Senate was not going to take up their bill, S. 191, even though H.R. 5615, our bill, was ready to go to the House floor. We had no opportunity to pass a bill last year, and here we are, arrived at that point in time where we can get a bill by; and not only do the members of this subcommittee believe, the members of the full committee, but it is the belief of the CIA, the Intelligence Committee, that this bill is a bill of the highest priority.

□ 1215

Well, if it is, we ought to get on with the business of passing this bill to which they have no objection. The administration prefers the Senate bill, as the gentleman from Ohio said, and probably the past administration preferred the Senate bill. But we are faced with the problem of whether or not we are going to get a bill by in this session of the Congress that is going to be tested in the courts and where the constitutionality of the bill will be sustained.

Mr. Chairman, I think we ought not to lose sight of that. We ought to keep our eye on the ball, and I plead with the Members of the House to remember that when we vote on this amendment.

Mr. MAZZOLI. Mr. Chairman, let me reclaim my time.

I believe I heard the gentleman from Illinois (Mr. MCCLORY), the ranking minority member of our subcommittee, indicate in the colloquy with the gentleman from Ohio that as early or as recently as today that the gentleman spoke with the Deputy Attorney General who indicated, I believe, if I understood the gentleman correctly, that there is at this point today no preference expressed by the Depart-

ment of Justice between the gentleman's approach, which is a "reason to believe," and our approach, which is specific intent. I would yield to the gentleman for a clarification of that.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding, and I will state that it is my understanding, that the Attorney General supports the bill that we have before us now, the language that we have before us. Insofar as resolving differences between our language and that in the Senate bill, the Attorney General seems satisfied to have it worked out by us in conference.

I might say that I do not agree with the gentleman from Massachusetts (Mr. BOLAND) as to the language which we had in the bill in the last Congress. I think we had the intent language in the bill in the last Congress. I am personally strongly in support of requiring that the element of intent should be contained in the bill, and that such an intent must be proved.

I think that intent is an appropriate part of a criminal statute. The language, "reason to believe," I understand to imply negligence, and this is not a negligence-type statute.

Mr. MAZZOLI. Mr. Chairman, I would like to yield to the gentleman from Massachusetts (Mr. BOLAND), who, I am sure, has something to add.

Mr. BOLAND. Mr. Chairman, I thank the gentleman for yielding.

The gentleman from Illinois (Mr. McCLORY) states it correctly, and he is right. The point I want to make, the important point I want to make is that the Senate was not about to take up any legislation last year in this area, and that is what we were faced with. So I would hope the Members would keep that in mind when we vote on this amendment.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has expired.

(On request of Mr. ASHBROOK, and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 3 additional minutes.)

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. Mr. Chairman, I will yield to the gentleman shortly, but if I could have just a few seconds, I suggest—and really I think the gentleman from Massachusetts (Mr. BOLAND) has said it earlier—that we have got to keep our eye on the ball. The gentleman from Kentucky really believes the "ball" to be the Central Intelligence Agency and all components of the intelligence community, and we had it clearly set forth in testimony this year when the bill was before us that with the language, "specific intent," it would serve their purpose of protecting their people abroad.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I thank the gentleman for yielding.

Again I want to set the record straight, particularly as far as the statement of the gentleman from Illinois (Mr. McCLORY) is concerned. I laid in the RECORD specific statements made in the past week or 2 weeks, statements in black and white by the President and the Attorney General.

My friend, the gentleman from Illinois, is now talking about a telephone call to an undisclosed person who said something to him that now gives him an understanding of their position. Note that, just an understanding. What understanding?

Let me ask the Members of this body which statements they want to put the most confidence in. What some undisclosed spokesman said in a telephone call that my friend from Illinois, a very honorable gentleman, interprets for us but is not in black and white or what I put in the RECORD in black and white very openly and candidly.

Second, let me address something my good friend, the committee chairman, said, but let me first lay on the record my admiration for the gentleman from Massachusetts (Mr. BOLAND). I think one of the finest things the Speaker of this House did when this Select Committee on Intelligence was established was selecting a gentleman, a legislator, and a patriot like the gentleman from Massachusetts, Mr. EDDIE BOLAND, as the chairman, and I will back down to no one in my admiration for him. But one thing I think my good friend has overlooked—and I say this with a wistful feeling—is that one of the problems in this country when we talk to the people is the literal takeover of lawmaking by the Supreme Court. Time and time again we hear people complain about the Supreme Court and the Federal judiciary.

Every court decision has indicated that the Congress of the United States is a valid part of the lawmaking purposes, indeed constitutional determinations. The determination of this body of a constitutional issue carries weight with the Supreme Court, and we should not back down simply because some lawyer or some scholar from Chicago says this might not be constitutional. We have the right on the record to say that we believe our actions are constitutional.

Past courts of all administrations have given high priority to what we in this Chamber determine to be constitutional, and we should not allow ourselves to be scared on this issue. As a matter of fact, we ought to reassert ourselves.

I happen to think this is an area where we should tell the court that we happen to believe this is constitutional, we put it in front of you, we believe you should agree with us, and we believe you will. So let us not allow that fear of a constitutional test to prevent us as legislators from doing what we think is right. Let us perform our duties as a coequal branch of Government.

The CHAIRMAN. The time of the gentleman from Kentucky (Mr. MAZZOLI) has again expired.

(By unanimous consent, Mr. MAZZOLI was allowed to proceed for 3 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, I have asked for permission to proceed for 3 additional minutes since I did yield to several Members in order to help them make continuous statements, and I will not ask for any further time.

Let me just briefly speak to a couple of points. One is that I agree with the gentleman from Ohio (Mr. ASHBROOK). I am never one to be stampeded or disposed to act simply because someone tells me something is unconstitutional. If I had proceeded without interruption, I would never have mentioned the word "constitutionality." My opposition to the amendment is not based alone on the question of constitutionality. That is something that we have to take a stand on and let the chips fall where they may.

My observation is based on statements that we had last year. I mentioned the Central Intelligence Agency's General Counsel, and I would quote the statement from the Deputy Director of the CIA in last year's emergency measure:

> Finally, a statute which requires proof that unauthorized disclosures by those who have not had an employment or other relationship of trust with the United States—

And this is the area we are talking about, section 601(c)—

> were made with specific intent to impair or impede the Nation's foreign intelligence activities, this requirement would be for the protection of those who might claim they had made a public disclosure for this legitimate purpose, although I believe Congress did determine if there are any specific purposes and made a provision for them.

So last year the Deputy Director was in favor of a specific intent standard.

I would simply say again, to use our chairman's very apt description, let us keep our eye on what we are really trying to do here. We are trying to pass a bill, first and foremost. We are trying to pass a bill which solves a problem, and the problem has been delineated. That is the reprehensible and heinous crime of divulging information on people who were posted under cover. We want to do it in an effective, efficient, and, hopefully, trim and legal way.

I think that what we have before the House has done specifically that. It has recognized the problem, and we have moved to answer the problem with tools which had the broad support and so-called consensus that any bill has to have in order to pass. We need not require only constitutional muster, but we also must pass this through the Congress for it to become a bill which the President signs.

Mr. Chairman, I strongly urge my friends in the Chamber and those who

are monitoring the proceedings with respect to the amendment offered by my friend, the gentleman from Ohio (Mr. ASHBROOK), who is a very valuable member of this committee, to oppose his amendment.

Mr. McCLORY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Chairman, I think it is extremely awkward, may I say, to oppose an amendment offered by a distinguished and respected colleague, and I do not intend to get into any spirited debate with him or to make any charge or to respond aggressively to any countercharges.

I do want to say that insofar as I can tell from a letter which he has from the President of the United States addressed to a single Member of the Senate, it makes no reference to H.R. 4 and it makes no comparison between the Senate bill and the bill that we have before us now.

May I state publicly that when a recommendation comes from the ACLU, I regard it with high suspicion. I am just automatically opposed to something that that organization might recommend for us to act upon. So, the fact that the statement has been made that some language here originated with the ACLU causes me to question the language which is there.

I have tested this language; I have challenged it; and I have looked for some hidden meaning that might be there that is not disclosed on the surface. I have not been able to detect it. I have subjected it to scrutiny by counsel, and we have not been able to detect any hidden, uncertain meaning there that might protect any person who would deliberately or intentionally disclose the name of a covert agent, thus jeopardizing his mission or impeding or impairing his intelligence activities.

So the language which I have seen and discussed as a representative of the committee with members of the Committee on the Judiciary and which has been worked out and which has enabled us to avoid sequential reference to the Judiciary Committee is language which I believe is constitutional and which will carry out the objectives of this legislation and which will enable us to move forward to punish those who disclose the names of covert agents who operate in behalf of our intelligence agencies, and I believe that we will provide for the quick and prompt punishment of persons who violate the provisions of this measure.

I do not think anybody should be exempted or that anybody should be excused. While it is directed primarily at scrubby publications which undertake to make it their business to deliberately disclose the names of covert agents, it would affect anybody who would make any such disclosures intentionally and who would intend to impair or impede our intelligence activities in that manner.

I think the language we have here is preferable, from the way I have studied it, and I believe that sincerely. I believe that in the last analysis the conference will decide that this is the best and the Attorney General's office will decide it is the best and the intelligence agencies will decide it is the best. But at this moment that is the decision we have to make.

Mr. Chairman, we have heard extensive debate on this amendment. I have tried to debate it directly and meet the challenges forthrightly, and I think that we have the good will of all concerned the way it is. So I hope the amendment is defeated.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I agree with my friend 100 percent. In the areas of difference that the gentleman and I have had over the years, our differences have been very, very narrow, and this is one of the very few.

My colleague raised a question for the record, and I think the record ought to have the other side of it. He raised the question that the reason to believe standard is equivalent to a negligence standard. It is the opposite. I think the record ought to show that, and I am not continuing with the idea of engaging in heated debate.

I think it is not equivalent. If you examine all the elements of proof required under subsection 601(c), it is clear that reason to believe does not mean that a negligent disclosure of an identity would be a criminal offense.

Second, the individual making the disclosure must know that the information he discloses does in fact identify a covert agent.

The person making the disclosure must also know that the United States is taking affirmative measures to conceal a covert agent's classified intelligence affiliation. Moreover, the disclosure must be in the course of a pattern of activities intended to identify and expose covert agents. Those are the important words, in my opinion.

Finally, the person making the disclosure must have "reason to believe" that his activities would impair or impede foreign intelligence activities in the United States.

All of these elements must be proved. An individual making an unauthorized disclosure under these circumstances can hardly claim negligence.

I would say that, Mr. Chairman, in all honesty, without engaging in heated debate, in response to what my friend, the gentleman from Illinois (Mr. McCLORY), has said as a very valuable presentation.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. McCLORY) has expired.

(By unanimous consent, Mr. McCLORY was allowed to proceed for 3 additional minutes.)

Mr. McCLORY. Mr. Chairman, first of all, I want to say that, with regard to the pattern of activities language, I was actively involved in opposing that language because it could require proof of repeated disclosures. I feel that a person should be subject to the penalties of this statute if they disclosed one name—even if they do it just once. It should not have to be a pattern. The bill should require just one disclosure, as far as I am concerned, and then it should be punished.

If we leave the language "pattern of activities" in there, we are going to have to prove a series of or a pattern of this type of activity, and I think that should not be in the bill.

Let me just state this further. The amendment offered by the gentleman from Ohio (Mr. ASHBROOK) would force the Government to make public at the trial more classified information than is currently required by the language which we have. The amendment would create this problem because it changes the focus of the bill from what the defendant intended to what he had reason to believe.

As to the "reason to believe" standard, it becomes relevant as to what effect the disclosure had or would have on our intelligence activities. This "results test" necessarily forces the Government to reveal what the agent whose cover was blown was doing in the country where he had been assigned, and what his replacement is doing there now. However, this information would not have to be released, because it would be irrelevant, under this bill as reported.

□ 1230

And, last year's "graymail bill" would not solve this problem because that law only protects irrelevant information from disclosure at the trial.

I think we have a good, sound bill here, and I hope it can be enacted in the form as presented by the committee.

Mr. FOWLER. Mr. Chairman, I move to strike the requisite number of words and rise to speak against the amendment.

I take the floor not to prolong this debate; but I want to rise to support the opposition of the gentleman from Illinois (Mr. McCLORY), to this amendment and to try to point out some specifics that I think have been overlooked in this debate.

I frankly do not see the relevance of what the other body did or the Senate committee did or what they might not have done: what is significant is what the House in our deliberations over the last 2 years has done, working closely together, not as partisans but

working closely to try to do one thing and that is the terribly difficult task of balancing the need to protect our intelligence agents abroad and the need to so draft the legislation that we will protect first amendment rights, protect people who have no access to classified information, who might, for whatever reason, somehow reveal the name of an intelligence agent of this country and, therefore, be criminalized under this legislation.

The amendment before my colleagues that we have been arguing, submitted by the gentleman from Ohio (Mr. ASHBROOK) does not deal with the first category, those people who have had authorized access to classified information. None of those are covered by the Ashbrook amendment.

The Ashbrook amendment does not cover the second group of individuals in our bill who learn of a covert identity as a result of having authorized access to classified information. That is not covered.

The only thing that the Ashbrook amendment attempts to do is to change the standard on people who have had no access to classified information, who may be revealing unclassified information, but who, if inadvertently or in jest name the name of someone who happens to be in the employ of our country in a covert capacity, could be prosecuted under this section.

I could be at a cocktail party under the Ashbrook amendment and just say in jest, "John Ashbrook is a covert operative of the CIA." If there was a John Ashbrook operating in the covert intelligence service of this country and I got it right accidentally, under the Ashbrook amendment, if we adopt it, I could be prosecuted, assuming the other elements of the bill were proved, because under a negligence standard as the gentleman from Illinois (Mr. MCCLORY) has eloquently pointed out, I could be prosecuted if I ought to know, if I ought to have a reason to believe that a John Ashbrook was in the employ of our country. That could not happen under a specific intent standard. There would be no specific intent shown if I had made that statement.

Mr. ASHBROOK. Mr. Chairman, will be gentleman yield?

Mr. FOWLER. I will be glad to yield to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. The agent from Ohio would like to point out that my good friend, when he speaks, I listen, but I think he has missed the first five words of the amendment. The point that he has not made is it says, "Whoever in the course of a pattern of activities."

Now, you could not just be at a cocktail party and make one statement if there were not a pattern of activities. A pattern would include seeking out the information, endeavoring to get it. You just cannot make one quick statement and that would not suffice for a pattern of activities. The cases, the language is very clear. It has to be a part of a course of action or a pattern of activities. So a casual statement of that type standing alone, without the pattern that showed there was Agent Ashbrook getting the information, he sought it out, he got it illegally, he got it illicitly, an entire pattern that would have been developed before that language would cover that example.

The CHAIRMAN. The time of the gentleman from Georgia has expired.

(By unanimous consent Mr. FOWLER was allowed to proceed for 3 additional minutes.)

Mr. ASHBROOK. If my colleague will continue to yield, I hope my colleague will acknowledge that point. That is the way it was written.

Mr. BOLAND. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the chairman of the committee, the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. On the very point of negligence, which has been raised by the gentleman from Ohio and by the gentleman from Illinois and the gentleman from Georgia, let me read from the hearings a statement of Richard K. Willard, who is counsel to the Attorney General for Intelligence Policy. My distinguished friend and colleague from Ohio (Mr. ASHBROOK) likes to quote Mr. Willard. Let me quote him with respect to this area.

The gentleman from Georgia (Mr. FOWLER), of course, has agreed to this, as has the gentleman from Ilinois (Mr. MCCLORY).

On page 36 of the hearings he says:

The "reason to believe" standard would permit prosecution of an individual who can be shown either to have known of and disregarded the risk of harm or who can be shown either to have known of and disregarded the risk of harm or to have been negligent in overlooking the evident consequences of his actions for U.S. foreign intelligence activities.

That is a quote from a letter from Richard Willard to Mr. MAZZOLI.

Mr YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I am delighted to yield to the gentleman from Florida (Mr. YOUNG).

Mr. YOUNG of Florida. I thank the gentleman for yielding. I think the gentleman has underscored a deficiency in this legislation when he describes his cocktail party scenario of identifying John Ashbrook as a CIA operative. My colleague will remember Mr. Hammer and Mr. Pearlman were murdered in their hotel in El Salvador just about a year ago and there are many who suspected they were murdered because they had been falsely identified as CIA agents.

Mr. FOWLER. If I may reclaim my time, that is an important area about false and misleading information. I think we are going to get to that. But if I may reclaim my time from the gentleman at this time, let me say to my friend from Ohio that I do not have it before me or I would read to him the testimony in answer to his question about my example.

It was plain from our hearings that one revelation to expose a covert agent, if it were done in the right manner and if there were specific intent to disclose that agent and dispose that agent, it would constitute an effort, a pattern.

That is why the specific intent language is needed, because we do not want to wait for all of this heinous activity to continue forever. If it is apparent that there is a specific intent of a person to point out and compromise every agent that we have in the employ of this country, we do not want to wait on some negligence standard as to who should have known or why. That is why the two sections have to come together.

The CHAIRMAN. The time of the gentleman from Georgia has again expired.

(By unanimous consent Mr. FOWLER was allowed to proceed for 3 additional minutes.)

Mr. FOWLER. Since the gentleman from Ohio and the gentleman from Georgia and all of us share the same goal, I only ask that the gentleman in his consideration, and our colleagues in this body will remember that it is this section and this section alone to which the gentleman's amendment applies. We are dealing with unclassified information or information that is published by someone who never had access to classified information. That is the only thing covered by this section, as I am sure the gentleman will agree. That is why in this section and this section alone one has to have specific intent if one is to balance those equities that we are both trying to balance and get at the source of the problem, those who are doing in our intelligence services by this deliberate attempt at exposure, but also to protect someone, whether it be myself, an American journalist, a member of a church, or John Q. American who happens to repeat the name of an American agent, with no pattern or practice or deliberate intent to compromise our intelligence services by so doing.

Mr. ASHBROOK. Will my colleague yield further?

Mr. FOWLER. I yield to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. What my friend has said, if you take it in the context of where he started and where he ends, it is quite interesting because he started by saying my language would make prosecution very easy for a person who casually at a cocktail pary might mention the name of John Ashbrook as an agent. Where he is ending is saying we want to make it as tough as possible. The gentleman thinks intent is tough. I think reason to believe is tough. But it is a rather unique argument he is making.

First he said you could have overprosecution. Now we are saying, to listen to the gentleman, that intent makes it easier to prosecute, and my language makes it harder to prosecute.

I would say to my good friend from Georgia (Mr. FOWLER): Which way is it; does my language make it harder to prosecute or easier to prosecute?

Mr. FOWLER. I would say to the gentleman from Ohio that what we are after is not easy prosecution or hard prosecution but accurate prosecution.

Mr. ASHBROOK. We would agree on that.

Mr. FOWLER. Constitutional prosecution.

The Supreme Court over and over again, and I cited the majority of the cases in my remarks during the general debate, has said that when you are in this area, first of all the statute has to be very narrowly drawn because you are running up against our privilege of free speech under the first amendment. They have, second, said that you need to show a specific intent. That is the constitutional standard to criminalize any activity.

Again, the gentleman from Illinois (Mr. MCCLORY), I submit, is absolutely right in describing the gentleman from Ohio's amendment as a negligence standard.

The CHAIRMAN. The time of the gentleman from Georgia has again expired.

(By unanimous consent Mr. FOWLER was allowed to proceed for 3 additional minutes.)

Mr. FOWLER. Again we are not talking about people who have had any access to classified information. We are going to get them and get them good under this bill, which I support and the gentleman supports. But if the Ashbrook amendment carried, we are talking about either unclassified information in the public domain or from the mouth of somebody who has never had any access to any classified information. Therefore, the offender would not have to intend a bad result. He would not even have to know that a bad result might occur.

But the gentleman's standard is that he should have known that a bad result would occur.

Mr. ASHBROOK. If it were a part of a pattern of activities.

Mr. FOWLER. I do not think we ought to look at prosecutorial standards. Of course, the easiest way to get into court is not what we are looking for here. What we are looking for here and what the gentleman is looking for is a constitutional standard that punishes the wrongdoer and yet protects an individual who has never been in the CIA, who has never had any access to any classified information, who may be repeating a name he has heard by picking up one of those journals that we are trying to do something with.

To apply a "reason to believe," negligence standard, I submit to the gentleman from Ohio, whose record in support to constitutional measures I not only recognize but admire, would simply seriously jeopardize the plight of those that have no part in being covered by this bill.

(At the request of Mr. ASHBROOK and by unanimous consent Mr. FOWLER was allowed to proceed for 2 additional minutes.)

Mr. ASHBROOK. If my colleague will yield, in talking about both the constitutional tests that must be mustered and talking about the standing of intent and the reason to believe, the most recent decision of the Supreme Court, June 29, 1981, Secretary of State Haig against Agee, accepted the very standard I am talking about.

On page 29 let me read nine lines of what the Court says in a direct quote:

□ 1245

Long ago, however, this court recognized that "No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops."

Citing Near against Minnesota, 1931.

Mr. FOWLER. That is classified information.

Mr. ASHBROOK. I quote:

Agee's disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the government does not render his conduct beyond the reach of the law.

They apply the "reason to believe" standard, not the "direct intent" standard.

I am inclined to think either one is constitutional, either one passes muster. I go back to the Department of Justice and what they have said, prosecutions and probably convictions would be much easier to obtain if we have the standards that I have.

I believe the standards of my colleague, the gentleman from Georgia, are fine. I think they are too prescriptive. And all I am saying is that both would meet the constitutional standard.

The Supreme Court has recently accepted the standard I am talking about, has done it time and time again. Let us not make it more difficult. That was the last point that the gentleman made. The gentleman did not want to make it more difficult. And I would suggest to my friend, the gentleman from Georgia, he is making it more difficult, and I say that most honestly.

Mr. FOWLER. If I may attempt to wind up, I say to my friend, the gentleman from Ohio, that I would be almost persuaded—it is a great hymn; I will not sing it for you—almost persuaded, if you were applying your standard to 601 (a) and (b), where we would be applying a standard of a test of such reason to believe to people who have access to classified information.

But I submit there is a whole history of the cases, distinguished from the Haig case because they were talking about classified information:

Elfbrandt against Russell, 1966:

A statute touching (first amendment protected) rights must be "narrowly drawn to define and punish specific conduct . . ."

The CHAIRMAN. The time of the gentleman from Georgia (Mr. FOWLER) has expired.

(By unanimous consent, Mr. FOWLER was allowed to proceed for 2 additional minutes.)

Mr. FOWLER. Broadrick against Oklahoma, 1972:

It has long been recognized that the first amendment needs breathing space and that statutes attempting to restrict or burden the exercise of first amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has given way to other compelling needs of society.

Why? Because we are talking about John Q. Citizen, who has not been in the employ of our country in a clandestine or covert operation, who has not had any access to any confidential or classified information. And that is why, in the amendment that the gentleman from Ohio (Mr. ASHBROOK) has offered, you have got to have specific intent in this section.

You could make an argument in the first two sections of the bill that are almost persuasive. But there is no room under the Constitution, and there is no quarrel with the CIA, there is no issue of liberalism versus conservatism or ACU's versus ACLU's. We are trying simply to balance the equity of John Q. Citizen in being able to speak out without the danger of being hauled into court when he has had no access to any classified information whatsoever.

Mr. EDWARDS of California. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the distinguished gentleman from California.

(Mr. EDWARDS of California asked and was given permission to revise and extend his remarks.)

Mr. EDWARDS of California. I thank the gentleman for yielding, and I compliment the gentleman from Georgia on his lawyerlike and scholarly presentation. I agree with him and I urge that the Ashbrook amendment be defeated.

I have indicated in my earlier remarks my opposition to H.R. 4. That opposition is premised upon my firm belief that any legislation which seeks to criminalize the publication of information which is already in the public domain is unconstitutional.

The efforts of the Intelligence Committee to narrow the criminal intent required for criminal prosecution are a vast improvement over the standard of proof now under consideration in the Ashbrook amendment. Such a broad intent standard would have a chilling effect on the free and open political

expression guaranteed by the first amendment.

If we are to pursue such legislation at all, we should proceed very carefully and in the least intrusive manner possible. This should be the case whenever the prospect of censorship or any restriction of free speech is involved, particularly when the content of the speech is political in nature. At the very least, a narrow specific criminal intent standard is necessary and I applaud once again the efforts of Chairman BOLAND and the entire Intelligence Committee for their efforts to narrow the broad reach of this bill.

Mr. FOWLER. I thank the gentleman.

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. FOWLER. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I would just make one 10-second addition, and that is, of course, the Agee case was not a criminal case. So I think there is a difference in the standards that the Supreme Court might be looking at.

Mr. FOWLER. I thank the gentleman.

Mr. YOUNG of Florida. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Ashbrook amendment.

Mr. Chairman, the question about the cocktail party scenario intrigues me, to a great extent. Really, the person who inadvertently or jokingly or in a lighthearted fashion says something about a CIA agent or mentions a name, we are concerned about that person or that breach of security, whether it is intentional or not. But, really, what we are after today are the Phillip Agees of the world, the ones who have a pattern of attempting to divulge and disclose in an attempt to damage the United States.

The gentleman from Ohio (Mr. ASHBROOK), I think, when he quoted from the opinion of the U.S. Supreme Court in the case of Haig against Agee, made the point that either of these languages are going to be constitutional. There does not seem to be any problem there. But whether Agee falls under 601(a) or 601(c), I do not think that really becomes a big problem. Agee has already expended all of his information under 601(a). The information that he obtained as a former CIA agent, he has already told the world all about that. That is not the problem. The problem today with Mr. Agee and the people of his like are described in that same opinion handed down by the Supreme Court on June 29. Let me read a couple more sentences from that, from page 2:

"In 1974, Agee called a press conference in London to announce his "campaign to fight the United States CIA wherever it is operating." He declared his intent "to expose CIA officers and agents and to take the measures necessary to drive them out of the countries where they are operating." Since 1974, Agee has, by his own assertion, devoted consistent effort to that program, and he has traveled extensively in other countries in order to carry it out. To identify CIA personnel in a particular country, Agee goes to the target country and consults sources in local diplomatic circles whom he knows from his prior service in the United States Government. He recruits collaborators and trains them in clandestine techniques designed to expose the "cover" of CIA employees and sources.

Well, Agee does this because of what he announced in a press conference in London in 1974, when he announced his campaign to fight the U.S. CIA wherever it is operating.

I submit, Mr. Chairman, that Mr. Agee's activities, as described by the U.S. Supreme Court, fall under section 601(c), not 601(a), because he is doing things now that he did not learn when he was an agent of the Central Intelligence Agency.

But I believe it is important, as our chairman has said, to keep our eye on the ball, what it is that we are doing here today. And what it is that we are doing today, Mr. Chairman, is announcing, for all of the world to see, a declaration of this Congress, and that is that we are going to protect the security of our Nation, that we are going to do it by protecting the security of those who serve our Nation. And that is what we are doing in H.R. 4, and that is what we would do with H.R. 4, as amended by the gentleman from Ohio (Mr. ASHBROOK).

Now, there are different opinions as to which one is the stronger approach. I tend to believe that the Ashbrook language is stronger. The Director of the Central Intelligence Agency believes the Ashbrook language is stronger. The President of the United States believes the Ashbrook language is stronger. A spokesman, a Mr. Renfrow, from the Carter administration, believed that basically the Ashbrook language was stronger. Dr. Roy Godson, an associate professor of government at Georgetown University and the director of the Consortium for the Study of Intelligence in a paper prepared for publication believes the Ashbrook language is stronger and constitutional and should be supported. His and other expert opinions support the stronger language.

I think it is important that we make that declaration as strongly as possible today, that we intend to protect those who are protecting us. We make that declaration not only to our adversaries in the world but also to our allies who are working with us as we attempt to protect ourselves. But I think it is extremely important, Mr. Chairman, that we make that declaration today for the agents, the men and women who serve in the intelligence community, for their families, for their spouses, for their children, for those people who do not care what the intent was, they do not care about all of the international politics; what they want most is the protection of the husband or wife who is involved in protecting our country. That is what we have got to do today, to make that strong declaration.

If there is anything we could do for the morale of the people who serve us in these operations believe me, this declaration on our part today is it. It will do an awful lot to improve and to boost that morale, to make them willing to go out and do the things they need to do to risk their lives, to take chances, in the protection of our great country. I believe we are going to make that declaration today whether we go with H.R. 4 as written today, or with H.R. 4 as amended by Mr. ASHBROOK. But I believe we make that declaration much stronger if we adopt the Ashbrook amendment, put in the strong language. It is constitutional and it is supported by those who would be affected by this law. And, remember, we are not talking about the person at the cocktail party who innocently and even mistakely might mention someone's name in jest or in joking. We are talking about the Phillip Agees of the world who for the purpose of removing the influence of the United States of America from the international scene is doing his utmost to identify agents, to reduce their ability to do their jobs.

Mr. DORNAN of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Ashbrook amendment.

(Mr. DORNAN of California asked and was given permission to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Chairman, I rise to vigorously support the amendment offered by the gentleman from Ohio (Mr. ASHBROOK). I would like to give a little historical background as to why I believe this stronger Ashbrook amendment is needed.

I appreciate the scholarly and the legalistic approach in this body to any issue that involves the greatest of our rights, the first amendment to the Bill of Rights, freedom of speech.

But what we are talking about now is also a life-and-death issue. We are speaking about bringing before the bar of justice American citizens who actually work to get fellow Americans murdered.

Isn't it obvious that the Phillip Agees of this world are so clever that in the future they will read weak statutes and then not speak themselves but get some young man or young woman, a U.S. citizen, corrupted in their early years by any of the false ideologies that we see touted across our country, and use that person as a cat's paw to do their dirty work—someone who has no background dealing with classified information or who has never even been in a government job where they would have had the opportunity to come across classified information. Then, that young traitor "plays dumb" about releasing information to get American intelligence officers murdered.

When I came to this Congress 5 years ago, on the first occasion I had

to go over to the CIA headquarters building in Langley I noticed several impressive things. (And, frankly, I am surprised that the overwhelming majority of my fellow colleagues have never been over there to the CIA for information.) When you approach the CIA building through the main entrance, you can't help but see a statue out in front of a young American who, 205 years ago yesterday, gave his life, the full measure of devotion, serving his country as an intelligence officer. He was a Yale graduate only 21 years of age. Capt. Nathan Hale was captured by his foes in one of the very first intelligence missions of our country during our Revolutionary War.

This statue on the CIA grounds is one of three exact copies of the one standing in "the yard" at Yale. Another is in front of the New York City Hall, the fourth right here in front of our Justice building out on Constitution Avenue. Many of us drive by that memorial to Nathan Hale every morning. It reminds me whenever I gaze upon it of the most striking memorial over at CIA headquarters, The Roll Call of Honored Dead.

When you walk into the CIA building, moved by the image of young Hale, his hands tied behind his back, denied a Bible by his captors, at the moment he uttered his final proud statement that rings out still, at least in our high school and grade school American history classes, "I regret that I have but one life to give for my country," you see in the main hall entrance on the wall to your right the gold stars of 38 modern Nathan Hales that have given their lives for their country, for us. Startling is the fact that less than half of the stars have names next to them. The majority of these American heroes go unknown as heroes even to their families, to most of their own colleagues, to their college pals, their high school friends. They die unheralded by a grateful Nation. Imagine this. Their own mothers and fathers, do not know why or how they died out there, in some hostile corner of this world, trying to glean the intelligence data to keep the free world free. What an amazing sacrifice these heroes make for us in total anonymity. And we know that some of them are fingered for death by fellow Americans who bear the loathsome title of traitor.

□ 1300

Between my first visit to Langley in 1977 and my last one a few weeks back three golden stars of heroic sacrifice went up on the wall. And those three new stars like the majority do not have names next to them. Who were they? Did we in Congress somehow fail to protect them. So three Americans unknown to this House die and we cannot praise them on this floor or strike medals for them, we cannot honor their mothers and fathers, their widows and children will receive no letters from us. These courageous intelligence agents simply fade into oblivion.

Of course Richard Welch's name is up on the wall, his gold star of honor among those of his colleagues, and we know beyond a doubt he was fingered for murder in Greece by the cowards we intend to stop with this strongly worded Ashbrook amendment.

This debate today as scholarly as it may be, reminds me of many debates we have had in this House, by the good men and women who serve here, who in trying to protect freedom of speech, soften the law so badly as to give the criminals virtual immunity thereby destroying the intent of what we were debating about in the first place.

Let me give several instances. We passed unanimously in this House, in my first year, a bill to do something about the particular offensive crime of child pornography. But we so crippled what we were trying to stop by putting on so called first amendment protections——

The CHAIRMAN. The time of the gentleman from California (Mr. DORNAN) has expired.

(By unanimous consent, Mr. DORNAN of California was allowed to proceed for 4 additional minutes.)

Mr. DORNAN of California. That no pervert has ever been prosecuted under the law we created. Ever.

To be more specific with a crime much more like what we are discussing now in the intelligence field, I recall submitting several Dornan amendments and supporting several Ashbrook amendments years ago to stop the incredible flow of high technology to the Soviet Union. Some of our amendment language of knowing what was being done, "a pattern of intent to get around the law," and so forth, was exactly parallel to the intent of what Mr. ASHBROOK is trying to put into law today. We heard the same misguided arguments then. The result was eunuch law. So the Soviet Union steals or buys technology from our country such as super computer technology with all the softwear involved, and secret electronic technology that by overwhelming vote in this Congress we tried to deny them. The net result of always watering down proper restrictions on criminal activity that we here put into law, is to render those laws utterly useless. I hear on the evening news a few weeks ago for instance that the illegal leakage of high technology to the Soviets is a multibillion-dollar scandal. And it involves major spy cases in my own district rich in aerospace defense knowledge. Again as a result of long tortured debate in the House, we ended up with nothing and a situation far worse by emboldening traitors with our crippled law.

I submit to all of the distinguished Members who have worked so hard on this, particularly on section 601(a) and (b), where we are all in agreement that what we may have here is a case of "not invented by the committee." This is what I find is most annoying in the Pentagon. When new defense ideas come before the Pentagon planners, if it is not an idea originated by someone on the Pentagon payroll, they react "sorry, not invented here."

We should not have that attitude here in Congress. Those of us not on a given committee can sometimes immeasurably strenghten committee bill language.

I think the language of the gentleman from Ohio (Mr. ASHBROOK) does just that. This ugly new type of American traitor who betrays our agents in the field whether that traitor serves in the Government or not, or had access to information or not, must be stopped. I believe Phillip Agee is a hard core traitor, every bit as deserving of disgrace as Benedict Arnold.

When he uses some young man or woman to do his dirty work for him, we should be able to bring that person to justice.

I asked the former CIA Director, and the current Deputy Director of the CIA to please try and declassify the files of some of the 38 Gold Star cases of men who died in our intelligence services. Maybe if we get some of these cases declassified and find that some died because of Agee-type informers more of you will see the wisdom of the Ashbrook amendment. My case is weakened here today because I cannot point to specific men in the current decade other than Dick Welch who died because someone targeted them for death to accomplish a political goal.

So, I ask my colleagues please give us the strongest language possible here. Again with all due respect to the other side of this debate I hope you do not prevail. We want the toughest language we can possibly get to stop this new phenomena in our country of fellow Americans arrogantly, flagrantly traveling around the world disrupting intelligence gathering activities. It is hard enough to recruit people in this field as it is after all of the demogogy in both Houses attacking a noble profession going all the way back to Biblical times. Every country in history that was a serious nation had intelligence forces. It is a necessary and respected profession.

I am a member of the Association of Former Intelligence Officers and I know their strong feelings on this amendment. As our country suffers under a crime wave now, because of the same attempts at legal niceties and inadvertent protections for criminals, let us for once give the benefit of the doubt to the men and women who are targeted for assassination. Rather than talk about hypothetical cocktail parties let us look at what is really out there * * * people moving around the world relishing in getting their Americans murdered. I urge you to vote yes on this excellent Ashbrook amendment.

Mr. KRAMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Ashbrook amendment. Listening to the debate I have heard the arguments that have been made about the chilling effect on free speech, especially in the case of an individual inadvertently discussing an agent, and then subjecting himself to possible harsh penalty. As a former prosecutor, I really do not believe the arguments hold water when we again look at the specific language with which we are dealing.

In fact, if anything, an argument can be made, I think very convincingly, that the Ashbrook language falls very strongly on the side of the civil libertarians and does in fact present a very difficult standard and burden of proof which has to be met, because if we go through it and look at the four separate elements, one must show in order to prove guilt under the language: First, a pattern of activities intended to identify and expose agents. One instance is not going to be sufficient. You have to be actively engaged in a pattern of activities.

Second, you have to act with a belief that those activities would indeed impair or impede our intelligence activities. In other words, if you do it as an innocent bystander, who has really no awareness of what he is involved in, you cannot be held accountable under the Ashbrook language. Third, you have to disclose the information. And fourth, when you disclose the information, you have to know that the Government of the United States has a real interest in concealing the declared agent's intelligence-gathering activities.

So you have not only, one, engaged in a pattern of activities, you not only, two, have to have a reason to believe that the activities would impair or impede, but you also have to know when you disclose the information that the United States is actively trying to conceal that individual's identity.

I would submit that that language certainly obviates any possibility that you are going to hold accountable any innocent third party or bystander that just happens to get himself caught up in a scenario unaware of what he is doing.

If anything, I think this language perhaps could be argued to be overly broad because it does not go so far as to make accountable anybody who discloses an agent's identity with an intent to impede intelligence gathering activities. It could have gone that far, but it does not.

So I think that for all civil libertarians, there is plenty of protection in the Ashbrook language and I hope that the committee will see fit to adopt the amendment.

Mr. MAZZOLI. Mr. Chairman, we have had a very interesting and thorough debate, but I think it is very nearly time for a vote. I see the gentleman from California wishes some time, but I think that we have aired the issue from every angle. It has been healthy and I hope and expect that we will very soon come to a vote.

Mr. LUNGREN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as one of those individuals who cosponsored the original version of this legislation, and then as a member of the Committee on the Judiciary who was, frankly, as many others, not consulted on this, I had to cancel three different meetings and take about the last 2 hours to review the material on this subject. Strangely enough, I think I come out for the very first time in not supporting an Ashbrook amendment here on the floor.

I have some concerns about this amendment and the section at which it is directed. I think it is somewhat of a mixed bag. We are talking about 601(c). The language entertained in the Ashbrook amendment itself, does, as mentioned by the previous speaker, talk about a "pattern" of activities as opposed to what we have in the law before us "in the course of an effort."

Why is that important? I think that is important because in an effort to make it tougher and more stringent it may actually weaken it because the amended language takes more than one action. It takes a pattern. And in that sense I think it creates another loophole.

Although that might be the language in the Senate bill, I think we adopted preferable language in the House version that we have here.

Second, I think the objectionable language in section 601(c), the one that creates a loophole, is the language that says "by the fact of such identification or exposure." It is my understanding that the gentleman from Ohio (Mr. ASHBROOK) has another amendment that he would offer that will knock that point out and retain the rest of the language section 601(c).

To me that is the most objectionable part of 601(c) as it is written at the present time.

I think we must remember that in this section of the bill we are not talking about those people who have an access to classified information. These are people who are common every day citizens; even though some of them may be members of the press, they are not required to be by this section.

In that context I do not believe it is too much for us to at least require that specific intent be proven.

I think there are other elements in the amendment that protect us from creating loopholes, but at the same time, I think the amendment offered at this time goes a little bit too far. In fact, the amendment does present a problem itself when it refers to a pattern. Because there it does, in fact, require more than one action, more than one activity, but at least two, and I think that in and of itself creates some difficulties.

So for those reasons, I would ask that we not support this particular Ashbrook amendment, although I am in hopes that he will offer the second one as indicated earlier.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I thank the gentleman for yielding.

I make my colleague one very definite promise, I will offer plenty of amendments the rest of this session the gentleman may not want to support.

Mr. LUNGREN. I do not think that is true.

Mr. ASHBROOK. But I do hope that the gentleman will support this one.

I think the gentleman missed one key point. It only requires one disclosure. It does not require a pattern of disclosures. It only requires one disclosure, and the reason to believe standard, as far as proving the intention of the person who makes the dislosure, is much easier for prosecution than the requirement of intent.

The Attorney General has said, and I will quote again the specific intent requirement—we are not talking about intent, we are talking about specific intent—

> The specific intent requirement can serve to confuse the issues in an actual prosecution to the point where the Government could be unable to establish the requisite intent beyond a reasonable doubt.

I say to my colleague and friend, he is a very perceptive legislator. I hope he will take another look at it. I do believe this is one of the Ashbrook amendments that he should support and I will give him a chance later in the session for a number of Ashbrook amendments that he would not even think of supporting.

Mr. LUNGREN. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. ASHBROOK).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ASHBROOK. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 226, noes 181, not voting 26, as follows:

[Roll No. 217]

AYES—226

Albosta	Bafalis	Bevill
Alexander	Bailey (MO)	Biaggi
Andrews	Bailey (PA)	Billey
Anthony	Barnard	Boner
Applegate	Beard	Bouquard
Archer	Benedict	Bowen
Ashbrook	Bennett	Breaux
Atkinson	Bereuter	Brinkley
Badham	Bethune	Broomfield

Brown (CO)	Hansen (ID)	Patman
Brown (OH)	Hansen (UT)	Petri
Broyhill	Hartnett	Porter
Burgener	Hefner	Pritchard
Butler	Heftel	Regula
Byron	Hendon	Rhodes
Campbell	Hiler	Ritter
Carman	Hillis	Roberts (KS)
Carney	Holt	Roberts (SD)
Chappell	Hopkins	Roe
Chappie	Hubbard	Roemer
Cheney	Huckaby	Rogers
Clausen	Hunter	Rostenkowski
Coats	Hutto	Roth
Coleman	Hyde	Roukema
Collins (TX)	Ireland	Rousselot
Conable	Jeffries	Rudd
Corcoran	Jenkins	Russo
Coyne, James	Johnston	Santini
Craig	Jones (TN)	Schneider
Crane, Daniel	Kazen	Schulze
Crane, Philip	Kemp	Sensenbrenner
Daniel, Dan	Kramer	Shaw
Daniel, R. W.	LaFalce	Shelby
Dannemeyer	Lagomarsino	Shumway
Davis	Latta	Shuster
de la Garza	Leach	Siljander
Deckard	Leath	Skeen
Dickinson	LeBoutillier	Skelton
Dornan	Lee	Smith (AL)
Dougherty	Lent	Smith (IA)
Dowdy	Levitas	Smith (NE)
Dreier	Lewis	Smith (NJ)
Duncan	Loeffler	Smith (OR)
Dyson	Lott	Snowe
Edwards (OK)	Lowery (CA)	Solomon
Emerson	Lujan	Spence
Emery	Madigan	Stangeland
Erdahl	Marlenee	Staton
Evans (DE)	Marriott	Stenholm
Evans (IA)	Martin (IL)	Stratton
Fenwick	Martin (NC)	Stump
Fiedler	Martin (NY)	Tauke
Fields	McCollum	Taylor
Filippo	McCurdy	Trible
Florio	McDade	Vander Jagt
Fountain	McDonald	Walker
Frenzel	McEwen	Wampler
Frost	McGrath	Watkins
Gaydos	Mica	Weber (MN)
Gephardt	Miller (OH)	White
Gibbons	Minish	Whitley
Gilman	Mitchell (NY)	Whittaker
Gingrich	Molinari	Whitten
Ginn	Mollohan	Williams (OH)
Goldwater	Montgomery	Wilson
Goodling	Moore	Winn
Gramm	Moorhead	Wolf
Gregg	Morrison	Wortley
Grisham	Mottl	Wright
Gunderson	Myers	Wylie
Hagedorn	Napier	Yatron
Hall (OH)	Nelligan	Young (AK)
Hall, Ralph	Nichols	Young (FL)
Hall, Sam	O'Brien	Zeferetti
Hammerschmidt	Oxley	
Hance	Parris	

NOES—181

Addabbo	Daschle	Ford (MI)
Akaka	Dellums	Ford (TN)
Anderson	DeNardis	Forsythe
Annunzio	Derrick	Fowler
Aspin	Dicks	Frank
AuCoin	Dingell	Fuqua
Barnes	Dixon	Garcia
Bedell	Donnelly	Gejdenson
Bellenson	Dorgan	Glickman
Benjamin	Downey	Gonzalez
Bingham	Dunn	Gore
Blanchard	Dwyer	Gradison
Boggs	Dymally	Gray
Boland	Early	Green
Bonior	Eckart	Hamilton
Bonker	Edgar	Harkin
Brodhead	Edwards (AL)	Hatcher
Brooks	Edwards (CA)	Hawkins
Brown (CA)	English	Heckler
Burton, John	Erlenborn	Hertel
Burton, Phillip	Ertel	Hightower
Chisholm	Evans (IN)	Holland
Clay	Fascell	Hollenbeck
Clinger	Fazio	Hughes
Coelho	Ferraro	Jacobs
Conte	Findley	Jeffords
Conyers	Fish	Jones (NC)
Coughlin	Fithian	Jones (OK)
Coyne, William	Foglietta	Kastenmeier
D'Amours	Foley	Kildee
Kindness	Oakar	Sharp
Kogovsek	Oberstar	Simon
Lantos	Obey	Smith (PA)
Lehman	Ottinger	Snyder
Leland	Panetta	Solarz
Livingston	Patterson	St Germain
Long (LA)	Paul	Stanton
Long (MD)	Pease	Stark
Lowry (WA)	Perkins	Stokes
Luken	Peyser	Studds
Lundine	Pickle	Swift
Lungren	Price	Synar
Markey	Pursell	Traxler
Marks	Quillen	Udall
Matsui	Rahall	Vento
Mattox	Rangel	Volkmer
Mavroules	Ratchford	Walgren
Mazzoli	Reuss	Washington
McClory	Richmond	Waxman
McHugh	Robinson	Weaver
McKinney	Rodino	Weiss
Mikulski	Rose	Whitehurst
Miller (CA)	Rosenthal	Williams (MT)
Mineta	Roybal	Wirth
Mitchell (MD)	Sawyer	Wolpe
Moakley	Scheuer	Wyden
Murphy	Schroeder	Yates
Murtha	Schumer	Young (MO)
Natcher	Seiberling	Zablocki
Neal	Shamansky	
Nowak	Shannon	

NOT VOTING—26

Bolling	Guarini	Pepper
Collins (IL)	Horton	Railsback
Courter	Howard	Rinaldo
Crockett	Hoyer	Sabo
Danielson	McCloskey	Savage
Daub	Michel	Tauzin
Derwinski	Moffett	Thomas
Evans (GA)	Nelson	Weber (OH)
Fary	Pashayan	

□ 1315

The Clerk announced the following pairs:

On this vote:

Mr. Guarini for, with Mr. Hoyer against.

Mr. Nelson for, with Mrs. Collins of Illinois against.

Messrs. DE LA GARZA, ANTHONY, and PORTER changed their votes from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1330

The CHAIRMAN. Are there other amendments to the bill?

AMENDMENT OFFERED BY MR. ASHBROOK

Mr. ASHBROOK. Mr. Chairman, I offer an amendment on page 3 which was printed in the RECORD in accordance with the rule.

The Clerk read as follows:

Amendment offered by Mr. ASHBROOK: Page 3, after line 21 insert the following new subsection:

"(d) Whoever intentionally discloses to any individual not authorized to receive classified information any information that purports to identify a U.S. official overseas as a covert agent, under circumstances that place a person in imminent danger of death or serious bodily injury, shall be fined not more than $25,000 or imprisoned not more than 5 years or both."

Mr. ASHBROOK. Mr. Chairman, many of the names listed by CovertAction Information Bulletin and CounterSpy are not CIA officers but other Americans serving their country overseas. CounterSpy listed some in Iran and these false identifications were used against our diplomats.

Jesse Jones an AID employee in Jamaica was falsely identified as a CIA officer by Louis Wolf of CovertAction Information Bulletin.

His home was attacked by armed gunmen. We have the responsibility to protect our CIA officers, but we must also protect other American Government officials who are the targets of the animals let loose by the Agee apparat.

I encourage the Members to support this amendment.

Mr. MAZZOLI. Mr. Chairman, I rise in opposition to the gentleman's amendment.

This was, as the gentleman accurately said, one of the many amendments which the subcommittee had before it and considered carefully during the writeup and markup of the bill, and which the full committee also considered. But we made the judgment and made the agreement that this addition, as proposed by the gentleman, would make the bill too broad in its coverage and potential. Even though none of us could agree that identifying wrongly or mistakenly some individual was correct conduct, certainly it renders that individual just as impotent to act in the capacity of intelligence as correctly identifying them, and we still said or felt as a committee that this was going beyond the regular bounds of this kind of a bill. It, in effect, makes it a crime to basically call somebody a bad name.

Now, the gentleman's amendment which earlier was approved does seem to set up what the gentleman from Kentucky feels is a negligence standard. And if we further broadened the coverage of that section, then I do believe we have gone beyond the bounds of a correct bill.

I would simply say that this is not sponsored by or supported by the intelligence agencies, nor is it urged upon us by the Department of Justice. As a matter of fact, both of them have misgivings about this kind of approach.

We had testimony before us by the legal academic community and they, in answer to the gentleman from Illinois who propounded a question, suggested that the language as proposed by the gentleman would constitute a problem. The bill which is before us is to protect national security interests and the lives of people who are pursuing national security interests. I certainly have nothing but the height of disregard for those who would name names which are eigther accurately named or inaccurately named, because the end product is about the same. But I worry about the addition of the gentleman's amendment for fear of making this bill too broad in its coverage and more or less a bill which would be transgressing the kind of legal standards which have been built up in the past for this kind of conduct.

Therefore, I would urge the House to reject the gentleman's amendment and to support the committee position.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I would be happy to yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

Mr. Chairman, it is true, as the gentleman says, that this is another subject. What we are trying to do through this legislation is to protect persons who operate undercover, covert agents, and this would expand the legislation into another area where there are false accusations made with respect to Americans serving overseas. I am not saying it is something that should not be covered by law. Perhaps it should be. But in an identities bill such as we have before us, it seems to me this is an inappropriate subject.

Mr. MAZZOLI. As the gentleman has correctly said, all of the effort of the committee through its many hours and weeks and years, really, of work has been to develop a focused, coherent, fairly targeted, limited application bill, limited to the kind of conduct which I have earlier called heinous and outrageous, which is to name names of U.S. citizens or non-U.S. citizens who are in an intelligence capacity. The gentleman's amendment would expand the coverage of the bill. It would be, I think, beyond the purpose of the bill we have before us.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Ohio.

Mr. ASHBROOK. I thank my colleague for yielding.

Mr. Chairman, once in a while on the floor we ask the question of whether or not at some future time this subject could be taken up. I know the answer in advance is "yes," because I know most members of our committee would want to protect those Americans who are not covered by this bill. I tend to agree with my colleague.

On the grounds that it probably would add one more area to weigh it down, I would not press for a vote, with the understanding that at some future time we would look at this matter.

Mr. MAZZOLI. I would certainly agree with that. I think the gentleman could state to the House that the gentleman from Kentucky was one of many who, during the markup, suggested that this was an area which ought to be looked into, but because we are trying to limit the scope of our bill, we thought we would put it off to a later date. I think the gentleman makes a very constructive suggestion that the amendment not be pressed to a vote, and the gentleman from Kentucky gives assurance to the gentleman from Ohio that we will in due course have hearings on this subject and see if it fits into the realm of legislation.

Mr. BOLAND. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the chairman, the gentleman from Massachusetts.

Mr. BOLAND. I appreciate the gentleman yielding to me.

Is the gentleman from Ohio going to withdraw the amendment?

Mr. ASHBROOK. Yes.

Mr. Chairman. I ask unanimous consent that the amendment may be withdrawn, with the assurance from both the chairman and the chairman of the subcommittee that it will receive action in the future.

Mr. MAZZOLI. I thank the gentleman.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

AMENDMENT OFFERED BY MR. WEISS

Mr. WEISS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. Before the gentleman proceeds, the Chair would like to inquire of the gentleman from New York if this is a germane amendment in accordance with the rule.

Mr. WEISS. It is, Mr. Chairman.

The Clerk read as follows:

Amendment offered by Mr. WEISS: On page 4, after line 21, insert the following new section:

SEC. 602 "(d) It shall not be an offense under section 601 to transmit or disclose information previously available from public sources or unclassified materials."

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. Mr. Chairman, the legislation contains certain defenses and exceptions because in the good judgment of the committee there are situations where there ought to be defenses to prosecution. If the disclosure is made, for example, to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives, it should not be considered an offense, obviously, and the legislation so states in section 602(c).

Section 602(a) says that it is a defense to prosecution if before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship.

The amendment which I have offered very simply says that where the disclosed material was previously available from public sources or unclassified materials its disclosure would not subject one to prosecution.

I think the amendment makes good sense from the point of view of those who are enthusiastic about this legislation as well as those who are concerned about its constitutionality.

Mr. Chairman, it seems to me that if we are primarily interested in providing protection to covert agents from those who would disclose names gained from classified materials which they gained access to either as employees, as former employees, or even outside of Federal employees, would want to safeguard the legislation from constitutional attack.

The clearest way of doing that is to make sure that violations or offenses which clearly overstep the bounds of rationality are excepted from the compass of the legislation.

Now, look at how the legislation as amended reads.

If one is a private citizen and if one picks up information which has been in the public domain which is not classified, which may never have been classified, even where one has never had anything to do with anyone who ever had access to classified information, and one repeats it, one has committed a crime.

□ 1345

I think that that is such a violent assault on the first amendment rights of American citizens that there is not a chance in the world that it will sustain constitutional challenge.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. WEISS. I will be happy to yield to the gentleman from Missouri.

Mr. SKELTON. Is this gentleman not speaking about two separate instances, the first instance being where it is in the public domain and the second instance being where it is unclassified?

Let us give the gentleman a first instance. For example, a situation where person A, a friend of person B, person A makes this secret material part of the public domain one way or the other, and then person B makes it his disclosure. Is the gentleman giving person B a defense when really he should not have it?

Mr. WEISS. I do not think so. What we are aiming at is a situation where the material is open to the world at large. It is unclassified material that is in the public domain and along comes someone now and says, "that was done with reason to believe it would damage the intelligence capacity of the United States."

I think that is awfully dangerous.

Mr. SKELTON. I thank the gentleman for the clarification.

Mr. WEISS. I think those who support this legislation most strongly ought to be the first to want to remove the danger to its constitutionality. I do not think I have anything further to add, Mr. Chairman. The amendment should speak for itself and I hope that those who are most concerned about the breadth of this legislation, as well as those who are least concerned, will vote for this amendment.

Mr. McCLORY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, clearly this legislation is intended to protect the lives and the safety of intelligence agents who operate undercover, and whether the information is secured from public

sources or private sources or is classified or unclassified material, if the intent is to impair and impede our intelligenee activities and places in danger the life or safety of an intelligence agent operating undercover, then we intend that this legislation should cover that.

It seems to me that if we would provide an out because of information having been published, even published overseas, for instance, which was one of the excuses offered by some who wanted to thwart this legislation, then it seems to me that we would frustrate the very efforts which we are undertaking here today with this legislation.

So that, I think that any effort to circumvent the intent of the legislation through this amendment or otherwise would be very destructive to what we are endeavoring to do here today, and I hope the amendment will be soundly defeated.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I just rise for a few seconds to join the gentleman. Certainly, had the original amendment of the gentleman from Ohio not carried, I could argue much more strongly against the amendment of the gentleman from New York. Now, because of the change of standards of proof the thing is muddled up, but I still feel and I join the gentleman in urging that we keep the bill clean, we penalize people that name names. I still feel that criticism of a national policy, of misguided intelligence policy, could have been undertaken by a serious journalist or by a national critic, and without violating the bill as reported. We now must take even more care.

So in the end, I believe that the gentleman's amendment should be defeated and the bill left as it is before the House today.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. WEISS).

The question was taken; and on a division (demanded by Mr. WEISS) there were—ayes 3; noes 38.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. BENNETT

Mr. BENNETT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Chair would inquire of the gentleman from Florida, Is this a germane amendment?

Mr. BENNETT. It is published on page H6456, of the CONGRESSIONAL RECORD of September 21.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. BENNETT: Page 3, after line 21, insert the following:

(e) Whenever, in the judgment of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, any person is about to engage in conduct that would constitute a violation of this Act, the Attorney General, on behalf of the United States, may make application to an appropriate United States district court for an order enjoining such conduct. Upon a showing that the safety or well-being of any officer, employee, or citizen of the United States would likely be jeopardized or that irreparable damage to United States foreign intelligence or counterintelligence activities or foreign affairs functions would be likely to result if such conduct is carried out, a permanent or temporary injunction, restraining order, or other order may be granted. Any proceeding conducted by a court under this subsection for the purpose of determining whether any information constitutes the type of information described in this Act shall be held in camera.

(Mr. BENNETT asked and was given permission to revise and extend his remarks.)

Mr. BENNETT. Mr. Chairman, I rise to offer an important amendment to the Intelligence Identities Protection Act. I believe I was the original sponsor of this type of legislation during the 96th Congress. I have twice testified before the Select Committee on Intelligence, stressing the urgency of congressional action to close dangerous loopholes in our laws. These loopholes endanger not only the lives of intelligence agents and officers all over the globe, but the very security of this Nation as well. Stemming from those hearings, the select committee has performed a very commendable act in framing legislation that addresses the realities of a very dangerous and unpredictable world. It is those very realities, however, which compel us to take this legislation a step further than was taken by the committee.

Specifically, the legislation which I have offered is found on page H 6456 of the September 21, 1981, CONGRESSIONAL RECORD.

The amendment I offer to the Intelligence Identities Protection Act will prevent the dangerous situations which the other provisions of this act seek to address, and will do this before they actually occur. Specifically, this narrow and carefully worded amendment would empower the U.S. district court to issue an injunction following an in-camera hearing to prohibit any person from compromising the identity of an intelligence officer should such action imperil that officer's safety or the conduct of U.S. foreign policy.

The significance of this extremely important provision is that it empowers the Federal Government, under carefully designed parameters, to stop those who seek to compromise our national security before the damage is actually inflicted. To pass the Intelligence Identities Protection Act without this amendment I offer today would be reminiscent of the old American parable about closing the barn door after the horse has run away. We are today addressing a basic problem confronted by our intelligence community. I say we should solve it once and for all. Certainly, the provisions of the bill which I originally introduced came informally from the CIA itself and this amendment was included.

Under the narrow parameters of this amendment, a restraining order could only be issued when the safety of an intelligence officer is jeopardized or when the foreign policy of the United States faces "irreparable damage." The courts have repeatedly and consistently affirmed the Government's right to protect itself from such dangers. As recently as 11 months ago, the U.S. Supreme Court reiterated in a case upholding the CIA secrecy agreement that the Government, "has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our Foreign Intelligence Service." That is *Snepp* v. *U.S.*, 444 U.S. 507 at 509 (1980).

Less than 2 years ago, the U.S. district court issued the same kind of injunction authorized in my amendment to prevent publication of an article on homemade hydrogen bombs which both endangered national security and would have provided potential terrorists with a blueprint for disaster. That is *United States* v. *Progressive, Inc.*, 467 F. Supp. 990 (1979).

My amendment clearly falls within that narrow area so critical to national security which the courts have consistently defined as necessarily exempt to the rule against prior restraint.

Mr. Chairman, we cannot watch idly while those who wish us ill seek to unravel the Intelligence community, on whose shoulders so much of national security rests. I urge passage of this important amendment. I think it puts the legislation in a stronger position than it is now. I think it would be helpful to our national defense and helpful to individuals who might otherwise be in danger.

Mr. MAZZOLI. Mr. Chairman, I rise to oppose the amendment offered by the gentleman from Florida.

Mr. Chairman, I rise with the greatest of respect to my friend from Florida, who is one of the leading Members of this House and a man who has done much to forward his Nation in times of distress. I understand fully what the gentleman has said, and I share with him the kind of frustration and even a sense of antipathy toward those who would do anything, however high their motive, which had the end product of impairing and impeding the national intelligence activity of this free Nation.

However, having said that, the gentleman from Kentucky must with respect oppose the amendment because it would subject the bill to what then I would have to say would be certainly extra constitutional scrutiny, and that would be the possibility of being an unlawful prior restraint on the issuance of information. I understand as a member of the committee that this

was not supported nor requested by any of the intelligence agencies, nor by the Justice Department. We of course, in connection with the kind of evil persons with whom we are dealing, who make these revelations, wanted to be sure we approach that problem, and made sure they were acts of commission, but at the same time do it in a way that would not cause people to believe that we have taken illegal action. We therefore consulted the Pentagon Papers case, Mear against Minnesota, all of the cases of consequences that have been decided in the United States on prior restraint, and crafted our bill within those bounds.

With respect to the gentleman, it would appear that having studied the amendment, it would push the bill beyond those bounds into what could be possibly an unconstitutional prior restraint, and I think it would jeopardize the bill's opportunity to do the things which we want to do, that is, to penalize those people who insist on divulging the names of our undercover agents.

Mr. McCLORY. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Chairman, I thank the gentleman for yielding, and I want to concur with the gentleman's statement. Although the amendment of the gentleman from Florida is well intended, I think it would not pass the same constitutional scrutiny which other provisions of the bill will. I think that it is not a good amendment, and I with reluctance oppose it.

Mr. BENNETT. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Florida.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(At the request of Mr. BENNETT and by unanimous consent, Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. BENNETT. As far as the desire of the CIA is concerned, they were the ones that sent me this. I did not write this language myself. It came from the CIA—not officially, but came years ago from the CIA as something they wanted. As far as the legality of it is concerned, I have cited a Supreme Court case and a Federal supplement case. The gentleman has cited no case. This amendment provides no unusual procedure. It is done many times.

Furthermore, if this particular provision of the law would fail, just this provision of the law would fail, it is in no way connected with the rest of the bill, so if it is unconstitutional it would fail alone.

Second, I have cited Supreme Court decisions and the gentleman has cited nothing.

Third, it does come from the CIA.

□ 1400

Mr. MAZZOLI. Mr. Chairman, I thank the gentleman from Florida (Mr. BENNETT) for his statement, and I would certainly yield to his legal scholarship. I would never want to engage him in a battle of knowledge in-depth on constitutional subjects.

I would only suggest to the gentleman that we have studied this issue over months and months, and we had no statement—and I will yield to other Members to address this subject if they wish—and at no point did we have any significant testimony or statement of urgency by any member of the intelligence community nor by the Justice Department representatives that this was the way to go. Each of them in every way felt that the bill we have before us would basically solve the problem, and I think it does.

Mr. Chairman, I would again, with respect, urge the committee to defeat the gentleman's amendment.

The question is on the amendment offered by the gentleman from Florida (Mr. BENNETT).

The question was taken; and the chairman announced that the noes appeared to have it.

Mr. BENNETT. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the committee appears.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to clause 2, rule XXIII, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The pending business is the demand of the gentleman from Florida (Mr. BENNETT) for a recorded vote.

A recorded vote was refused.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. SOLOMON

Mr. SOLOMON. Mr. Chairman, I offer an amendment which has been duly printed in the RECORD pursuant to the rule.

The CHAIRMAN. The Clerk will report the amendment.

Mr. SOLOMON. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The amendment reads as follows:

Amendment offered by Mr. SOLOMON: Page 7, strike out lines 4 through 25 and insert in lieu thereof the following:

"(4) The term 'covert agent' means—

"(A) a present or former officer or employee of an intelligence agency, or a present or former member of the Armed Forces who is or was assigned to duty with an intelligence agency—

"(i) whose past or present identity as such an officer, employee, or member is classified information, and

"(ii) who is serving outside the United States or has within the last five years served outside the United States;

"(B) a United States citizen whose past or present intelligence relationship to the United States is classified information and—

"(i) who resides and acts outside the United States (or who resided and acted outside the United States) as an agent of, or informant or source of operational assistance to, an intelligence agency, or

"(ii) who at the time of the disclosure is or was at any time acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

Mr. SOLOMON. Mr. Chairman, first of all, let me just say to the committee chairman, the subcommittee chairman, and our ranking minority members on this side of the aisle, as well as all the members of our committee, that I just want to commend them for an excellent job. I think this is long overdue, and we should have passed this legislation long ago.

However, I do feel that there is one inequity that we really must deal with. If we are going to put some teeth back in our CIA, if we are going to have a counterintelligence operation which is going to be as strong as our potential enemies, I think we have to do everything in our power to give them that opportunity.

□ 1415

Mr. Chairman, this amendment in no way expands the scope of this legislation. It does not add or subtract from the constitutionality of the bill. What it does is put our CIA on an equal or superior basis with any other foreign intelligence operations in this world. I think we owe it to the American people to give them this kind of protection. I would certainly hope all of our colleagues would support this legislation.

The committee has not acted firmly enough to protect the identities of former intelligence agents and operatives from unauthorized disclosures. My amendment would extend the protective coverage of this legislation to include former agents and operatives of the intelligence community.

The majority of these former agents have already served the United States at considerable personal risk, and to my mind, there is absolutely no possible justification for exposing them to danger at this point by excluding them from the protection provided by this legislation.

There are also persuasive counterintelligence reasons for maintaining the cover of former agents. In many instances the individual's contacts and sources may still be in place and active. Such a network may have been

passed on to the individual's successor and should the former agent's relationship be revealed, the entire network may be compromised. Accordingly, in those cases where such a relationship remains otherwise concealed and where the United States continues to take affirmative measures to keep it concealed, unauthorized disclosures of such relationships should warrant attachment of criminal liability.

By protecting former agents, my amendment will strengthen this legislation in three vital ways:

First, it will protect former agents from possible harm as a result of the disclosure of their true identities and even save their lives.

Second, it will protect active operatives who may have assumed the former agent's position; and

Third, it will protect the entire intelligence network which may have been established by a former agent and passed on to the former agent's successor.

The Central Intelligence Agency would like to see my amendment enacted and in response to my request for their comment on my bill H.R. 7400, which contained an identical provision as the amendment at hand, the agency counsel said:

> Through efforts such as yours we hope to strengthen and improve the intelligence apparatus that is so vital for the protection of our Nation's security. As you know, the CIA has been engaged in a consistent effort to have each of the various proposals of your bill enacted into law.

Mr. McCLORY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise in reluctant opposition to the amendment. I know the amendment is well intended but I might say that in the 3 years of hearings that we had on this legislation this amendment was never even proposed. It seems to me that this goes far beyond the scope of the legislation as we have intended it here and would create a new type of crime which the Federal Government would be involved in.

What we are trying to do here is to protect the identities of covert agents who are operating on behalf of our country and to protect them against assassination or against their identity being disclosed because our national security is involved. It seems to me that with that intent and with that purpose of this legislation we should limit the scope of the legislation to covert agents who are operating in behalf of our CIA or other intelligence agencies or, FBI agents who operate under cover with regard to their counterintelligence activities.

I have full sympathy for former intelligence officials and I think we should protect them. I am sure that they are protected under many laws—local, State, and Federal laws—that we have now. But to include them in this legislation, it seems to me, diverts our attention from what we are undertaking to do here and would establish a new criminal statute that would impose obligations on the Federal Government with regard to an activity which is beyond the scope of the legislation.

Mr. SOLOMON. Mr. Chairman, will the gentleman from Illinois yield?

Mr. McCLORY. I yield to the gentleman from New York (Mr. SOLOMON).

Mr. SOLOMON. I understand the reasoning behind my good colleague and I know he does not want to upset the applecart. I know that is the reason that many of our good, patriotic Americans such as the gentleman from Massachusetts, the gentleman from Kentucky and all of them are opposing some of these good amendments is because we do not want to upset the applecart.

But let me just ask. I thought the reason behind this legislation was to provide protection for our network of counterintelligence agents. Let me just point out a hypothetical example which may not be so hypothetical. Suppose we had an agent who was performing in a counterintelligence purpose in a foreign university as a professor. Suppose he left that professorship and came back to the United States and retired. Suppose we replaced him with another agent in the same capacity as the professor in that university and all of a sudden we reveal the former CIA agent's identity; then he is connected with the other and it blows the whole cover for the whole network of operations.

That is what my amendment is intended to correct. I see no difference between an agent and a former agent and I think the merit therefore should be to enact this legislation with the amendment in the legislation.

Mr. McCLORY. I will say to the gentleman I imagine there are a great many covert agents, intelligence officers who operated under cover who themselves disclosed their identity after their service was terminated and their identity became well known. As has been pointed out, we are endeavoring to protect the covert agents even when their identity is publicly disclosed. Former officials who are in retirement and who are no longer rendering any active service in behalf of our Nation, no longer involved in espionage on intelligence gathering or other activities related to our national security are just plain not covered in this legislation. I think this amendment is out of place here.

Mr. MAZZOLI. Mr. Chairman, I move to strike the requisite number of words and very briefly rise to speak in opposition to the gentleman's amendment.

I certainly understand what the gentleman from New York (Mr. SOLOMON) is trying to do. Certainly it speaks well for him that he worries about the ultimate situation of our intelligence people who reach retirement age.

But as the gentleman from Illinois has said, the point and purpose of the committee bill, and the committee's bill before the House today, is to protect those agents, employees, assets, sources, who are in some jeopardy in the event that their name or identity is disclosed. We could have named everybody in the CIA or the DIA and said, "Look, any of those names are classified and anytime somebody puts one in print then they are going to be sanctioned." We decided, and I think correctly so, to narrow the focus to those agents who might suffer some injury in the event that their names were disclosed.

The gentleman's amendment, the point that the gentleman pushes with his amendment came before the committee and I think, as the gentleman from Illinois (Mr. McCLORY) has said, we had in the 3 years I have worked on this bill no real strong evidence that former officers, retirees, people who, as the gentleman said, served abroad and have come back home are in a position of jeopardy or danger that we certainly understand is the case of those who are currently working actively and are involved in foreign assignments under cover.

So we, by matter of choice, and with an effort to limit the coverage of our bill to make sure we go against the people we really want to go against, we limited the coverage of the bill to active officers and U.S. citizen agents. In the case of intelligence employees as the gentleman knows, "covert agent" includes those who serve overseas and have come back home within the last five years. So if the individual is a U.S. citizen and he is an actual employee of an intelligence agency and has had a post abroad and comes back home, his identity is protected for 5 years.

In the event of a person who is with the Central Intelligence Agency who is in the normal run of things retired, the committee felt that that would not normally reach the situation of danger in the event of his name being disclosed.

Mr. SOLOMON, Mr. Chirman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from New York.

Mr. SOLOMON. I understand what the gentleman is talking about, but I wish the gentleman would just look at page 2 of the bill on line 18 where we talk about "the United States is taking affirmative measures to conceal." if the gentleman looks over on page 3, line 7, it continues that languages, that "the United States is taking affirmative action to conceal." Line 18 it continues. I do not change that language.

What I am saying is that if the United States is still taking action to conceal that former CIA agent's identity, then it ought to be a crime the same as it is if he is an agent or if he falls within that 5 years, because sometimes the cover can continue much longer than the 5 years. All my amendment does is include them

through such time as the United States is taking affirmative action to conceal, and that is what they want.

Mr. MAZZOLI. Without saying my statement would be inclusive, I would suggest that in most cases where an individual's identity is still being protected and where the Government is taking affirmative measures to conceal such agent's identity, that person probably has an active role and involvement with the agency at this time, in which case that person should be included, and is included, as a covert agent.

In the true case of retirement they probably have outlived the purpose for which they were originally posted abroad or at home.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Ohio (Mr. ASHBROOK).

Mr. ASHBROOK. I would say to my colleague I understand how we want to move this bill along. I agreed earlier not to present an amendment because the subject matter can be taken care of later, and also because it would have expanded what we are trying to accomplish here. On that agreement I withdrew. We have an immediate need for legislation for an urgent need in a narrow legislative action.

I think we are not really expanding the basic coverage in this amendment by the gentleman from New York (Mr. SOLOMON). As a matter of fact, let me pose a question. I happen to believe we might have an ambiguity in the bill which we did not intend to be there. In the bill we talk about current intelligence officers. We should also talk about protecting former CIA officers. Quite often we are also talking about protecting their assets. One might expose a former agent who was a CIA operative in Paris and the simple fact of exposing him, even though he is a former agent, would automatically trigger problems for his assets, the people he met with, the people he had lunch with every day.

We should cover that situation. But the way the language is written it is almost a two-stage operation. If you expose a former CIA officer, you also have to show that in doing that you are exposing his assets or an agent or someone he worked with overseas.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

(At the request of Mr. ASHBROOK and by unanimous consent Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. I yield to the gentleman.

Mr. ASHBROOK. I understand the position of the majority that we do not want any amendments to the bill. I am just wondering if our colleague from New York has not pointed out something that is very important and if we do not, in fact, have an ambiguity in the bill.

Mr. MAZZOLI. I would certainly accept the gentleman's general description. I mean that in the sense that it makes us discuss a problem.

But in the 3 years we have worked with this, and I have been on the subcommittee each time, I really cannot recall that the intelligence agencies said that this was really something that was a problem. What was a problem was Welsh in Athens and what has been a problem was what happened in Kingston, Jamaica, and what has been a problem has been what occured in Mozambique, but not agents who have come back home and who have retired and who were in a sense doing other things.

Obviously there are at least two former CIA agents now who are in the headlines for having gone on to other things. I would certainly suggest that those people, if they were acting under cover at some point, should not have any kind of further protection from the government for what they do now.

What I would like to comment upon is the gentleman's remarks about networks. The contention is that when you reveal, you may endanger the network. You know that within the coverage of covert agents we have included a non-U.S. citizen who is in the United States now and did occupy a covert position for us abroad, who has, for example, family that is still in the old country, or vulnerabilities in returning home if exposed. That person can be protected; that person does come under the coverage of the bill. So we are not unmindful of that kind of network problem.

But we felt, and I think correctly so, that we needed to limit the scope to that kind of network and to eliminate as being too extensive the coverage of retired CIA or other intelligence personnel. Those people are, or were, professionals. They use clandestine tradecraft to conceal their recruitment and running of agents. Revealing the identity is unlikely, therefore, to expose any network of agents.

Mr. ASHBROOK. If my colleage will continue to yield for one point, he might convince me to relax my concern. Is it my colleague's understanding that it is the intention of this legislation, where the U.S. Government endeavors to protect the identity of a former agent who has retired, to protect this agent? It is important not only to protect the agent but the assets and the work that he might have accomplished or have been engaged in throughout the world. Wherever the Government has endeavored to protect that agent, even though he is retired, is that that situation covered by the bill the gentleman from Kentucky has written?

Mr. MAZZOLI. Yes, but I am not sure that answers the problem.

Mr. ASHBROOK. Because if it is, it would easily answer most of the questions my colleague has raised.

The CHAIRMAN. Time of the gentleman from Kentucky has again expired.

(By unanimous consent Mr. MAZZOLI was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Certainly where the United States is taking affirmative measures to conceal an agent's identity, that certainly works in behalf of saying that that agent still had an active role to play, some active connection with the U.S. Government. But it was not the committee's intent, in candor to the gentleman, that we continue this relationship indefinitely if, for example, the method of maintaining the cover here or maintaining the security of this information is just simply something out at Langley, some sort of a book. I think there has to be an active relationship that still exists between a U.S. citizen and the U.S. Government before that individual would still qualify as a covert agent who would then come under the coverage of the bill in the event that that information is disclosed.

But, again, if the Government is taking active steps to maintain the sanctity of that information, then that could well establish the fact that this individual has a continuing relationship with the Government. But, again, I do not think that would extend to a retiree, to a person who once had a clandestine role in intelligence, who had just come back home to retire.

Mr. ASHBROOK. I thank my colleague for that very honest answer. That would have been my appraisal, too. It is one of the reasons that, on balance, I would favor the amendment of the gentleman from New York, because I think it is very important to protect the former agents, to protect the assets and contacts that he had, the ongoing work that he had that was not necessarily terminated simply because of his retirement. We should vote yes on the Solomon amendment to help complete the job we started by the adoption of my stronger language just a few minutes ago.

□ 1430

I think my colleague from New York has a very good amendment and a very good point.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. SOLOMON).

The question was taken; and on a division (demanded by Mr. MAZZOLI) there were—ayes 25, noes 14.

RECORDED VOTE

Mr. MAZZOLI. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 313, noes 94, not voting 26, as follows:

[Roll No. 218]

AYES—313

Akaka	Anderson	Anthony
Albosta	Andrews	Applegate
Alexander	Annunzio	Archer

Ashbrook	Gibbons	Moorhead
Atkinson	Gilman	Morrison
AuCoin	Gingrich	Mottl
Badham	Ginn	Murphy
Bafalis	Glickman	Murtha
Bailey (MO)	Goldwater	Myers
Bailey (PA)	Gonzalez	Napier
Barnard	Goodling	Natcher
Barnes	Gradison	Neal
Beard	Gramm	Nelligan
Bedell	Gregg	Nichols
Benedict	Grisham	Nowak
Benjamin	Guarini	O'Brien
Bennett	Gunderson	Oakar
Bereuter	Hagedorn	Ottinger
Bethune	Hall (OH)	Oxley
Bevill	Hall, Ralph	Panetta
Biaggi	Hall, Sam	Parris
Blanchard	Hammerschmidt	Patman
Bliley	Hance	Patterson
Boggs	Hansen (ID)	Pepper
Boner	Hansen (UT)	Perkins
Bonker	Hartnett	Petri
Bouquard	Hatcher	Peyser
Bowen	Heckler	Pickle
Breaux	Hefner	Porter
Brinkley	Heftel	Ratchford
Brodhead	Hendon	Regula
Broomfield	Hertel	Rhodes
Brown (CO)	Hightower	Ritter
Brown (OH)	Hiler	Roberts (KS)
Broyhill	Hillis	Roberts (SD)
Burgener	Holland	Roe
Butler	Holt	Roemer
Byron	Hopkins	Rogers
Campbell	Horton	Roth
Carman	Howard	Rudd
Chappell	Hubbard	Russo
Chappie	Huckaby	Santini
Cheney	Hughes	Sawyer
Chisholm	Hunter	Schneider
Clausen	Hutto	Schroeder
Clinger	Hyde	Schulze
Coats	Ireland	Sensenbrenner
Coelho	Jeffords	Shamansky
Coleman	Jeffries	Sharp
Collins (TX)	Jenkins	Shaw
Conable	Johnston	Shelby
Conte	Jones (NC)	Shumway
Corcoran	Jones (OK)	Shuster
Coughlin	Jones (TN)	Skeen
Coyne, James	Kazen	Skelton
Craig	Kemp	Smith (AL)
Crane, Daniel	Kildee	Smith (IA)
Crane, Philip	Kindness	Smith (NE)
D'Amours	Kogovsek	Smith (NJ)
Daniel, Dan	Kramer	Smith (OR)
Daniel, R. W.	LaFalce	Smith (PA)
Dannemeyer	Lagomarsino	Snowe
Daschle	Lantos	Snyder
Davis	Latta	Solomon
de la Garza	Leach	Spence
Deckard	Leath	Stangeland
Derrick	LeBoutillier	Stanton
Dickinson	Lee	Staton
Dingell	Lent	Stenholm
Dorgan	Levitas	Stratton
Dornan	Lewis	Stump
Dougherty	Livingston	Tauke
Dowdy	Loeffler	Tauzin
Dreier	Long (LA)	Taylor
Duncan	Lott	Thomas
Dunn	Lujan	Traxler
Dwyer	Luken	Trible
Dyson	Lungren	Udall
Eckart	Madigan	Vander Jagt
Edwards (OK)	Marks	Volkmer
Emerson	Marlenee	Walgren
Emery	Marriott	Walker
English	Martin (IL)	Wampler
Erdahl	Martin (NC)	Watkins
Ertel	Martin (NY)	Weber (MN)
Evans (DE)	Matsui	White
Evans (GA)	Mattox	Whitley
Evans (IA)	McCollum	Whittaker
Evans (IN)	McCurdy	Whitten
Fazio	McDonald	Williams (OH)
Fenwick	McEwen	Wilson
Ferraro	McGrath	Winn
Fiedler	McHugh	Wirth
Fields	McKinney	Wolf
Fish	Mica	Wortley
Fithian	Michel	Wright
Flippo	Mikulski	Wyden
Florio	Miller (CA)	Wylie
Foglietta	Miller (OH)	Yatron
Foley	Minish	Young (AK)
Fountain	Mitchell (NY)	Young (FL)
Frost	Molinari	Young (MO)
Fuqua	Mollohan	Zeferetti
Gaydos	Montgomery	
Gephardt	Moore	

NOES—94

Addabbo	Gejdenson	Reuss
Aspin	Gore	Richmond
Bellenson	Gray	Robinson
Bingham	Green	Rodino
Boland	Hamilton	Rose
Bonior	Harkin	Rosenthal
Brooks	Hawkins	Rostenkowski
Brown (CA)	Jacobs	Roukema
Burton, John	Kastenmeier	Roybal
Burton, Phillip	Lehman	Sabo
Clay	Leland	Schumer
Conyers	Long (MD)	Seiberling
Coyne, William	Lowry (WA)	Shannon
Dellums	Lundine	Simon
Dicks	Markey	Solarz
Dixon	Mavroules	St Germain
Donnelly	Mazzoli	Stark
Downey	McClory	Stokes
Dymally	McDade	Studds
Early	Mineta	Swift
Edgar	Mitchell (MD)	Synar
Edwards (CA)	Moakley	Vento
Erlenborn	Moffett	Washington
Fascell	Oberstar	Waxman
Findley	Obey	Weaver
Ford (MI)	Paul	Weiss
Ford (TN)	Pease	Whitehurst
Forsythe	Price	Wolpe
Fowler	Pursell	Yates
Frank	Quillen	Zablocki
Frenzel	Railsback	
Garcia	Rangel	

NOT VOTING—26

Bolling	Edwards (AL)	Rahall
Carney	Fary	Rinaldo
Collins (IL)	Hollenbeck	Rousselot
Courter	Hoyer	Savage
Crockett	Lowery (CA)	Scheuer
Danielson	McCloskey	Siljander
Daub	Nelson	Weber (OH)
DeNardis	Pashayan	Williams (MT)
Derwinski	Pritchard	

□ 1500

The Clerk announced the following pairs:

On this vote:

Mr. Nelson for, with Mrs. Collins of Illinois against.

Mr. MOAKLEY and Mr. ROSE changed their votes from "aye" to "no."

Messrs. AuCOIN, OTTINGER, VOLKMER, and PATTERSON changed their votes from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. ZABLOCKI. Mr. Chairman, I move to strike the last word.

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Chairman, I take this time for the purpose of a colloquy. Several of our colleagues expressed a concern regarding the relationship between the Peace Corps and the intelligence community.

Mr. Chairman, because of the importance of a complete separation between the Peace Corps and intelligence activities to the integrity of the Peace Corps and to the safety of volunteers, I would like to clarify with the subcommittee chairman of the Committee on Intelligence the portion of the committee report concerning the Peace Corps.

My understanding is that the committee strongly reaffirms its support of the executive branch policies which have governed the relationship between the Peace Corps and the intelligence community agencies for more than 20 years; that is, the Peace Corps should not be used or appear to be used as cover for any intelligence activities.

I interpret the language of the committee report with reference to any executive branch contemplation of any changes in the foregoing policies in no way as inviting the executive branch to contemplate such changes. My understanding is that the committee determined not to add a provision exempting the Peace Corps from the legal obligation to provide intelligence cover only because: First, the executive branch assured us that a statutory exemption was unnecessary; and second, we did not want other agencies to seek such exemption based on such Peace Corps precedent. Thus, we view the language in the committee report as an admonition to the executive branch of the committee's disposition that the foregoing policies should not be disturbed, as a warning to the executive branch that no changes in the foregoing policies may be implemented without prior notification to the committee and as telling the executive branch of the committee's strong predisposition to disapprove any proposed changes in such policies.

Are these the subcommittee chairman's understandings?

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. ZABLOCKI. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding, and very definitely they are the understandings of the chairman and of our committee and I would like, with the gentleman's indulgence, to read directly from our report to which the gentleman referred, on page 19. In reference to a letter which William J. Casey, the Director of the Central Intelligence Agency, sent to Mrs. Ruppe, who is the Director of the Peace Corps, stating his opposition to the use of the Peace Corps for cover and the letter is quoted in our report, then follows this committee language:

It is the committee's belief that based on assurances of the Director of the Central Intelligence Agency, the President will not suggest any changes in the traditional distance which has separated the Peace Corps and the intelligence operation.

Nevertheless—

This is I think important. I will just read one more paragraph and make mention that this is in line with what the chairman of the Committee on Foreign Affairs has said.

Quoting from our report:

Nevertheless, should the intelligence community contemplate a change in this policy—

The policy of distance between the Peace Corps and the intelligence community—

at any time in the future, the committee would consider such a contemplated change to be a "significant anticipated intelligence activity" which must under law be reported

to the committee before it is implemented. The committee would question seriously any such change in policy.

Mr. ZABLOCKI. I thank the gentleman.

Mr. Chairman, I hope the President, when signing this legislation, would take the opportunity to reaffirm these policies.

Mr. WEISS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, after witnessing the happenings of this day, one might think with some justification that if an amendment were offered to strike the first amendment to the Constitution of the United States, that it would probably carry.

Section 601(c) of this bill, especially with the adoption of the Ashbrook amendment, presents an incursion into the first amendment perhaps unparalleled by any piece of legislation in our Nation's history during peacetime.

Never before has the publication, by a private citizen, of information that is already in the public domain been made a punishable offense.

Perhaps the only saving grace is that there has been such constitutional overreaching that is unlikely that this piece of legislation can withstand a constitutional challenge; but for the dignity of this House, for its own self-respect, I would hope that we would defeat this bill and allow the committee to report out at least the bill which it originally had in mind. Mr. Chairman, the Intelligence Identities Protection Act, H.R. 4, presents serious constitutional problems and should be rejected by the House.

Section 601(c) strikes directly at the heart of the first amendment. Its broadly sweeping prohibitions have been denounced as unconstitutional by more than 60 law professors, who had urged that a similar provision in last year's bill be deleted. This section makes it a crime for a private citizen to publish any information that identifies covert agents—even if the information was obtained from nonclassified materials readily available to the public. Unlike other sections of the bill, it is not limited to persons who have or have had authorized access to classified information. It applies to journalists, academics, and all other persons who disclose identifying information, even where the disclosure is made in the context of news reports, scholarly publications, or enforcement of regulations of private organizations.

The scope of the bill extends well beyond the protection of the identities of undercover CIA agents. The definition of covert agent now includes present and former CIA agents, FBI agents, informants, and sources of operational assistance to intelligence agencies, whether abroad or in the United States. Clearly, such a broad definition exceeds the bill's original purpose of protecting the lives of covert CIA operatives working abroad.

The first amendment guarantees that, "Congress shall make no law * * * abridging freedom of speech or of the press." However, section 601(c) will have such a chilling effect on newsreporting, academic research, and other individuals' activities in this area that these fundamental rights will be seriously impaired. Would, for example, journalists investigating the Watergate scandal have felt free to report the CIA connection of some of the burglars if this provision had been in effect at the time? Or would a church official who discovered that a CIA agent was posing as a missionary feel free to divulge that person's identity to purge the church's own ranks? Under section 601(c), both of these actions would subject the individuals to prosecution and possible jail sentences and/or fines.

Recognizing that section 601(c) posed severe threats to the first amendment, the Intelligence Committee incorporated language that attempts to make this provision constitutionally acceptable. The section purported to criminalize only disclosures made with "intent to impair or impede the foreign intelligence activities of the United States." It also requires that the disclosure be made "in the course of an effort to identify and expose" covert agents.

Although well intentioned, even these limitations in my judgment were entirely inadequate. The standards are unconstitutionally vague and require subjective judgments which might vary according to the political climate at home or abroad. For instance, the "intent" requirement could have been met whenever a publication disclosed and consequently diminished the effectiveness of an intelligence activity. The Justice Department has conceded that such a requirement "may itself have the effect of additionally chilling legitimate critique and debate on CIA policy because general criticism of the intelligence community could seem to corroborate an 'intent to impair or impede'."

The additional requirement that the disclosure be "in the course of an effort to identify and expose" offers no further protection. As the witness from the Society of Professional Journalists observed before the committee: "* * * a journalist who is assigned to cover the intelligence community on a regular basis may indeed establish a pattern of reporting the names of agents or sources in the course of legitimate coverage of the CIA." Nor is it hard to imagine a strong argument being made that the research and investigations made for even a single story is a sufficient "effort" to fall within the strictures of the statute.

Of course the Ashbrook amendment has now wiped out the "intent" requirement and substituted a standard calling only for "reason to believe" that intelligence activities would be impaired or impeded.

Section 601(c), especially with the adoption of the Ashbrook amendment, presents an incursion into the first amendment perhaps unparalleled by any piece of legislation in our Nation's history during peacetime. Never before has the publication of information that is already in the public domain been made a punishable offense. Never before has the disclosure of information unrelated to national security matters, that would neither injure the United States nor give any advantage to a foreign power, been made a punishable offense.

According to its sponsors, the Intelligence Identities Protection Act was originally intended to protect the lives of American undercover agents serving abroad from those few individuals and publications who used classified information to expose the identities of agents, regardless of the possible jeopardy and risks that could have resulted. That, I believe, is an important goal, but not one that should be accomplished at the sacrifice of our most basic constitutional rights. I reject the theory that we cannot have "both an ongoing intelligence capability and a totality of civil rights protection." We must instead heed the warnings of Justice Douglas, who wisely proclaimed that protection of free speech is "essential to the very existence of a democracy."

I urge my colleagues to join me now in helping to defeat this bill. It is our first duty as elected Representatives to uphold the Constitution and protect all our citizens from this kind of dangerous encroachment on their fundamental rights.

Mr. SEIBERLING. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take 5 minutes. It had been my intention to vote for the committee's bill with one change, and that would have been an amendment that was going to be offered by the gentleman from Ohio (Mr. PEASE) which would have required the word "lawful" or "legal" to be inserted in front of the words "foreign intelligence activities of the United States."

As was pointed out by the Senate Intelligence Committee in their original report, there were many unlawful activities by our intelligence agencies and, of course, those of us who were on the Committee on the Judiciary during the impeachment investigation can affirm that that was indeed the case.

Certainly we should not impair the ability of the news media or any citizen to reveal the names of agents engaged in unlawful activities, whether they are intelligence agents or any other employees of the United States. And yet, this bill, as amended by the Ashbrook amendment, would make it a crime to do so.

In my opinion, the bill as amended is clearly unconstitutional. If the House

does not see fit to reject this bill, there is no way under the rules, of correcting the error, because the Senate bill contains the same language as the Ashbrook amendment. If the House should pass this bill and it should be reported to the President for signature, those of us who believe in the Constitution should urge the President to veto the bill, so that we might start over and report out a bill that is sound.

Let me just point out one other thing. I think that the activities of someone like Phillip Agee, in deliberately setting out to undermine our intelligence agencies, are absolutely reprehensible, and it seems to me that they ought to be curbed. But let me also point out that he has declined to come back to the United States, and anybody who is really intent on sabotaging our intelligence agencies would not be deterred by this kind of legislation because he can stay outside of the country, and this law could not reach him.

So, what we are doing is making it impossible, without the risk of prosecution, for the news media or individual citizens, or even Members of Congress, to reveal abuses and corruption and violations of the law in any intelligence agency by any agent if such revelation would identify or expose any agent. It seems to me that would be a tragedy. If it does become law, we must hope that the courts of the United States would rule it to be, as I believe it would be, clearly unconstitutional.

□ 1500

Mr. McCLORY. Mr. Chairman, I move to strike the requistite number of words.

Mr. Chairman, as the gentleman from Kentucky has stated, we are coming to the end of the debate on this bill. There are several things that I want to say.

First of all, I want to express the hope that there will be strong support for the legislation in its amended form.

Furthermore, I want to say quite candidly, that I did work hard to bring this measure to the floor at this time and did enter into agreements with the chairman of the subcommittee and the chairman of the full committee with respect to language that was embodied in this bill which has now been amended by the Ashbrook amendment. I agreed to support that amendment as contained in the committee bill and to oppose the Ashbrook amendment primarily so that we could avoid sequential referral to the Judiciary Committee we undertook to make the language acceptable to members of the Judiciary Committee who otherwise would have scheduled hearings on this measure, delayed its enactment, and would have certainly revised the text of the bill in some way which would be different from the bill as we have it here.

I want to state to the majority side particularly that I did everything I could to support the committee bill in the form in which it was brought to the floor. I talked to the White House. I talked to the Attorney General's Office and I have discussed it with the leadership on our side to get the maximum vote in support of the committee bill.

We failed in that. We failed in that on this amendment. I do not want to dispute the fact that the Ashbrook amendment may be an improvement. It may be a stronger amendment. I did not prefer it. I preferred the committee bill the way it was; but the House has spoken and it seems to me that what we have to do here is to provide legislation that the Congress is enacting and not legislation which may be recommended by the White House or the Attorney General or the CIA or anybody else. It is our business and our action.

We have now taken this action and it seems to me we are providing a good piece of legislation which is needed and which we want to see enacted as promptly as possible.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I am happy to yield to the gentleman from Ohio.

Mr. ASHBROOK. I merely would add to what my colleague has said my particular support and respect for the work the gentleman accomplished. He did precisely what he said. We made sure it came out on the floor.

I have been on the committee for many years. We often know that committees make decisions, make agreements to get bills to the floor. That was made.

The gentleman was an honorable person. He stuck to his agreement 100 percent. I congratulate the gentleman from Illinois for his work in getting the bill to the floor.

I think we may have improved it. I hope we have improved it. At any rate, we have no differences now. Let us support the bill.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

(At the request of Mr. MAZZOLI, and by unanimous consent, Mr. McCLORY was allowed to proceed for 2 additional minutes.)

Mr. MAZZOLI. Mr. Chairman, will the gentleman yield?

Mr. McCLORY. I am happy to yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Chairman, I just simply would like to make a few comments. One is to thank the gentleman in the well for his work. Certainly the gentleman has been indefatigable in pursuing this bill for the 3 years that we have been colleagues on the committee.

Once again I want to express my appreciation to the gentleman from Massachusetts whose leadership and willingness to get into the subject and move it along is the reason we are here today. I want to thank the gentleman.

Also I think I would like to suggest that the gentleman join me in expressing our thanks to our staff on the minority and the majority side, because this is very intricate and very difficult and tought legislation. It is tough to understand. These men and women have helped us a great deal.

Lastly, and even though I oppose the gentleman from Ohio and oppose the gentleman from New York in their two successive amendments, and feel that the bill that the committee reported out was the very best edition, I certainly am enthusiastically in support of H.R. 4.

I recognize that some Members will have differences of opinion, but I hope that we will have a very long and positive vote for the bill to among other things indicate to our intelligence people that their work is appreciated and their security is very important to us.

Mr. McCLORY. Perhaps now with section 601(c) being in the precise form of the Senate bill, we can send the House bill over there and they can enact our bill and get this to the President's desk for signature at an extremely early date.

Mr. BOLAND. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to tell the House that this committee has worked its will this afternoon. It is not my will. I have difficulty with the bill as it now stands. When one brings this kind of a bill to the floor, when we have had some consensus on the bill with respect to committees of the House and also with respect to Members in this House, I think there is an obligation on my part to support that position. I have done that and the committee has done it, I think, and our side has done it to the best of our ability.

Again, this bill gives me great trouble in its present form. I can understand the position of those who supported the amendment that was offered by the distinguished and able and persuasive gentleman from Ohio. We spent many long hours on the committee and in hearings on this bill together over the past few years. I can appreciate his position.

I also appreciate the fact that the administration had a preference for the Senate bill 391 which includes the language that was offered by the gentleman from Ohio.

My own position is that I cannot support this bill on final passage. I do not intend to do it.

We will leave it that, in the final analysis, it is going to pass anyhow. We will get to conference, and as a conferee I am not going to try to disrupt the rather significant opinion of the membership of this committee or this House; but we will leave to the conferees their best judgment what will be done in conference.

I suppose that one can say from what has transpired here today and what the feeling will be in the Senate, perhaps we are looking at H.R. 4 in its final form as it was passed today.

But in any event, Mr. Chairman, I intend to vote against final passage of this bill.

The CHAIRMAN. Are there any other amendments to be offered? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PANETTA) having assumed the chair, Mr. PICKLE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4) to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources, pursuant to House Resolution 223, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BOLAND. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 354, nays 56, not voting 23, as follows:

[Roll No. 219]

YEAS—354

Addabbo	Barnard	Breaux
Akaka	Beard	Brinkley
Albosta	Benedict	Brooks
Alexander	Benjamin	Broomfield
Anderson	Bennett	Brown (CA)
Andrews	Bereuter	Brown (CO)
Annunzio	Bethune	Brown (OH)
Anthony	Bevill	Broyhill
Applegate	Biaggi	Burgener
Archer	Blanchard	Butler
Ashbrook	Billey	Byron
Atkinson	Boggs	Campbell
Badham	Boner	Carman
Bafalis	Bonker	Chappell
Bailey (MO)	Bouquard	Chappie
Bailey (PA)	Bowen	Cheney
Chisholm	Hatcher	Obey
Clausen	Heckler	Oxley
Clinger	Hefner	Panetta
Coats	Heftel	Parris
Coelho	Hendon	Patman
Coleman	Hertel	Patterson
Collins (TX)	Hightower	Paul
Conable	Hiler	Pepper
Conte	Hillis	Perkins
Corcoran	Holland	Petri
Coughlin	Holt	Peyser
Coyne, James	Hopkins	Pickle
Coyne, William	Horton	Porter
Craig	Howard	Price
Crane, Daniel	Hubbard	Pritchard
Crane, Philip	Huckaby	Pursell
D'Amours	Hughes	Quillen
Daniel, Dan	Hunter	Rahall
Daniel, R. W.	Hutto	Ratchford
Dannemeyer	Hyde	Regula
Daschle	Ireland	Reuss
Davis	Jacobs	Rhodes
de la Garza	Jeffords	Ritter
Deckard	Jeffries	Roberts (KS)
DeNardis	Jenkins	Roberts (SD)
Derrick	Johnston	Robinson
Dickinson	Jones (NC)	Rodino
Dicks	Jones (OK)	Roe
Dingell	Jones (TN)	Roemer
Donnelly	Kazen	Rogers
Dorgan	Kemp	Rose
Dornan	Kindness	Rostenkowski
Dougherty	Kogovsek	Roth
Dowdy	Kramer	Roukema
Dreier	LaFalce	Rousselot
Duncan	Lagomarsino	Rudd
Dunn	Lantos	Russo
Dwyer	Latta	Santini
Dyson	Leach	Sawyer
Early	Leath	Schneider
Eckart	LeBoutillier	Schroeder
Edwards (AL)	Lee	Schulze
Edwards (OK)	Lent	Sensenbrenner
Emerson	Levitas	Shamansky
Emery	Lewis	Sharp
English	Livingston	Shaw
Erdahl	Loeffler	Shelby
Erlenborn	Long (LA)	Shumway
Ertel	Long (MD)	Shuster
Evans (DE)	Lott	Simon
Evans (GA)	Lujan	Skeen
Evans (IA)	Luken	Skelton
Evans (IN)	Lungren	Smith (AL)
Fascell	Madigan	Smith (IA)
Fazio	Marks	Smith (NE)
Fenwick	Marlenee	Smith (NJ)
Ferraro	Marriott	Smith (OR)
Fiedler	Martin (IL)	Smith (PA)
Fields	Martin (NC)	Snowe
Findley	Martin (NY)	Snyder
Fish	Matsui	Solarz
Fithian	Mattox	Solomon
Flippo	Mavroules	Spence
Florio	Mazzoli	St Germain
Foglietta	McClory	Stangeland
Foley	McCollum	Stanton
Ford (MI)	McCurdy	Staton
Forsythe	McDade	Stenholm
Fountain	McDonald	Stratton
Fowler	McEwen	Stump
Frost	McGrath	Swift
Fuqua	McHugh	Synar
Gaydos	McKinney	Tauke
Gephardt	Mica	Tauzin
Gibbons	Michel	Taylor
Gilman	Mikulski	Thomas
Gingrich	Miller (OH)	Traxler
Ginn	Mineta	Trible
Glickman	Minish	Udall
Goldwater	Mitchell (NY)	Vander Jagt
Goodling	Moakley	Vento
Gore	Molinari	Volkmer
Gradison	Mollohan	Walgren
Gramm	Montgomery	Walker
Green	Moore	Wampler
Gregg	Moorhead	Watkins
Grisham	Morrison	Waxman
Guarini	Mottl	Weber (MN)
Gunderson	Murphy	White
Hagedorn	Murtha	Whitehurst
Hall (OH)	Myers	Whitley
Hall, Ralph	Napier	Whittaker
Hall, Sam	Natcher	Whitten
Hamilton	Neal	Williams (MT)
Hammerschmidt	Nelligan	Williams (OH)
Hance	Nowak	Wilson
Hansen (ID)	O'Brien	Winn
Hansen (UT)	Oakar	Wirth
Hartnett	Oberstar	Wolf
Wortley	Yatron	Young (MO)
Wright	Young (AK)	Zablocki
Wylie	Young (FL)	Zeferetti

NAYS—56

Aspin	Edwards (CA)	Pease
AuCoin	Ford (TN)	Rangel
Barnes	Frank	Richmond
Bedell	Garcia	Rosenthal
Bellenson	Gejdenson	Roybal
Bingham	Gonzalez	Sabo
Boland	Gray	Schumer
Bonior	Harkin	Seiberling
Brodhead	Hawkins	Shannon
Burton, John	Kastenmeier	Stark
Burton, Phillip	Kildee	Stokes
Clay	Lehman	Studds
Conyers	Leland	Washington
Crockett	Lowry (WA)	Weaver
Dellums	Lundine	Weiss
Dixon	Markey	Wolpe
Downey	Miller (CA)	Wyden
Dymally	Mitchell (MD)	Yates
Edgar	Ottinger	

NOT VOTING—23

Bolling	Frenzel	Pashayan
Carney	Hollenbeck	Railsback
Collins (IL)	Hoyer	Rinaldo
Courter	Lowery (CA)	Savage
Danielson	McCloskey	Scheuer
Daub	Moffett	Siljander
Derwinski	Nelson	Weber (OH)
Fary	Nichols	

□ 1515

The Clerk announced the following pairs:

On this vote:

Mr. Nelson for, with Mrs. Collins of Illinois against.

Until further notice:

Mr. Nichols with Mr. Weber of Ohio.
Mr. Scheuer with Mr. Hollenbeck.
Mr. Danielson with Mr. Railsback.
Mr. Fary with Mr. McCloskey.
Mr. Moffett with Mr. Pashayan.
Mr. Hoyer with Mr. Siljander.
Mr. Savage with Mr. Derwinski.
Mr. Carney with Mr. Daub.
Mr. Courter with Mr. Frenzel.
Mr. Rinaldo with Mr. Lowery of California.

Mr. SCHUMER changed his vote from "yea" to "nay."

Mr. PRICE changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERSONAL EXPLANATION

Mr. PEPPER. Mr. Speaker, I unavoidably missed the vote on rollcall 217. If I had been present, I would have voted "aye."